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No. 648

RECORD.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT.

No. 15,620.
CIVIL.

VAUGHN C. PAYNE AND
EDITH PRUITT PAYNE,
APPELLANTS,

vs.

UNITED STATES OF AMERICA,
APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI.

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[fol. 2] Complaint.

(Filed in U. S. District Court on August 27, 1953.)

United States District Court,
Eastern District of Missouri.

United States of America,
Plaintiff,
v.
Vaughn C. Payne, Edith Pruitt Payne, Marjorie Mitchell Bell, formerly Marjorie Mitchell, J. F. Schrontz, and Samuel Z. Morganstern,
Defendants.

Civil No. 9366 (1).
Moore, C. J.

Count One.

1. This action is brought pursuant to 28 U. S. C., Section 1396. It is authorized by Commissioner of Internal Revenue and directed by the Attorney General of the United States.

2. The defendants Vaughn C. Payne and Edith Pruitt Payne are husband and wife. Each of them resides within the Eastern District of Missouri except defendant Marjorie Mitchell Bell, formerly Marjorie Mitchell, who is a resident of the State of Florida.

3. Vaughn C. Payne duly filed his individual income tax returns for each of the years 1942-1947, both inclusive. Thereafter the Commissioner of Internal Revenue assessed additional income taxes, penalties, and interest against Vaughn C. Payne, for each of the years 1942-1947, both inclusive, as shown in Exhibit 1 to this complaint, which is incorporated herein by reference. No part of said assessed tax liabilities has been paid, except as shown in Exhibit 1.

4. Vaughn C. Payne is indebted to the plaintiff for its taxes, as shown in Exhibit 1.

5. Interest accrued on the tax indebtedness of Vaughn C. Payne until paid, but no part of said accrued interest has been paid.

[fol. 3] Count Two.

6. The plaintiff restates all that is alleged in Count One of this complaint.

7. Vaughn C. Payne, at various times after January 1, 1942, being then indebted to the plaintiff for its taxes, and not then having otherwise sufficient property to pay his outstanding tax liabilities, transferred his assets to himself and Edith Pruitt Payne, as joint tenants or tenants by the entirety.

8. Vaughn C. Payne and Edith Pruitt Payne purchased with said transferred assets certain real property located in the Eastern District of Missouri which they have ever since held as tenants by the entirety. The real property so purchased is more specifically described in Exhibit 2 to this complaint, which is incorporated herein by reference.

Count Three.

9. The plaintiff restates all that is alleged in Count One of this complaint.

10. At various times after January 1, 1942, Vaughn C. Payne, being then indebted to the plaintiff for its taxes, and not then having otherwise sufficient property to pay his outstanding tax liabilities, purchased certain real property located in th Eastern District of Missouri, more specifically describea Exhibit 2 to this complaint.

11. Title to all of said real property was taken by Vaughn C. Payne and Edith Pruitt Payne as tenants by the entirety and has ever since been so held.

12. Vaughn C. Payne and Edith Pruitt Payne took title to the real property listed in Exhibit 2 as tenants by the entirety in order to defraud the creditors of Vaughn C. Payne, including the plaintiff.

[fol. 4] Count Four.

13. The plaintiff restates all that is alleged in Count One of this complaint.

14. Vaughn C. Payne, at various times after January 1, 1942, being then indebted to the plaintiff for its taxes, and not then having otherwise sufficient property to pay his outstanding tax liabilities, transferred his assets to Edith Pruitt Payne.

Count Five.

15. The plaintiff restates all that is alleged in Counts Taree and Four of this Complaint.

16. This action is also based on 26 U. S. C., Section 3678.

17. Each of the defendants is a resident of the Eastern District of Missouri.

18. The plaintiff acquired liens for its taxes against all property and rights to property of Vaughn C. Payne on the dates the assessment lists on which taxes were assessed against him were received by the Collector of Internal Revenue, and for the amounts assessed, as shown in Exhibit 1.

19. The plaintiff acquired liens for its taxes against all property and rights to property of Edith Pruitt Payne on the dates when Vaughn C. Payne, not having otherwise sufficient property to pay his outstanding tax liabilities, transferred his assets to her, and for the value of such transferred assets.

20. Upon information and belief, the defendant Marjorie Mitchell Bell, formerly Marjorie Mitchell, claims an interest in certain real property of Vaughn C. Payne.

21. Upon information and belief, each of the defendants J. F. Schrontz and Samuel Z. Morganstern claims an interest in certain real property of Edith Pruitt Payne.

22. The liens of the plaintiff are prior in right to any right, title or interest of any of the defendants in the property of Vaughn C. Payne and the property of Edith Pruitt Payne.

[fol. 5] Wherefore, the plaintiff demands judgment;

against defendant Vaughn C. Payne for unpaid taxes, penalties, and interest in the sum of $22,844.50, plus all interest accrued on the accounts stated herein from the time they became due until they were paid, as provided by law, and for legal interest on the above amounts, and its costs; and

against defendants Vaughn C. Payne and Edith Pruitt Payne jointly, (1) for such part of the judgment entered against defendant Vaughn C. Payne individually herein as cannot be satisfied out of said defendant's individual assets, and (2) decreeing each of the conveyances to the defendants as tenants by the entirety, listed in Exhibit 2, to be in fraud of the creditors of Vaughn C. Payne and reforming each of said conveyances to convey title to Vaughn C. Payne and Edith Pruitt Payne as tenants in common, and (3) for its costs; and

against defendant Edith Pruitt Payne for such part of the judgment entered against defendant Vaughn C. Payne individually herein as cannot be satisfied out of said defendant's individual assets; and

against defendant Marjorie Mitchell Bell, formerly Marjorie Mitchell, that any right she may have to the property of Vaughn C. Payne, or of Vaughn C. Payne and Edith Pruitt Payne in common, is inferior to that of the plaintiff; and

against defendants J. F. Schrontz and Samuel Z. Morganstern, that any right either of them may have to the property of Edith Pruitt Payne is inferior to that of the plaintiff; and

for such other and further relief as may appear proper to the Court.

HARRY RICHARDS,
United States Attorney,
W. FRANCIS MURRELL,
Assistant United States Attorney.

[fol. 6]

Exhibit 1.

Year	Date	Assessment A/C No.	List Rec'd by Dir'r	Notice of Lien Filed*	Inc. Tax	Assessed Penalties	Interest	Pd. Date	Am't Paid	Outstanding Balance	Accrued Int. Paid
1942.....	6/30/49	517758	7/11/49	8/12/49	$ 444.38	$ 222.19	$249.90	12/22/50	$ 30.19	None	Yes
								1/22/51	203.90		
								2/26/51	245.80		
								3/28/51	245.80		
								4/19/51	190.78		
1942.....	6/16/49	557900	6/27/49	8/12/49	47.79	.00	19.29	10/14/49	67.08	None	Yes
1943.....	6/30/49	517759	7/11/49	8/12/49	2,846.78	1,423.39	907.50	4/19/51	55.01		No
								5/25/51	245.80		
								10/23/52	576.60		
								12/11/52	246.54		
								1/13/53	246.54		
								3/ 3/53	246.54		
								3/ 5/53	246.54		
								4/17/53	246.54		
								5/ 7/53	246.54		
								6/ 5/53	246.54		
								6/25/53	246.54		
								8/14/53	246.54	$ 2,081.40	No
									0.00	6,378.72	No
1944.....	6/30/49	517760	7/11/49	8/12/49	3,552.63	1,906.74	919.35				
1945.....	6/30/49	517761	7/11/49	8/12/49	1,666.89	941.50	907.97	10/23/52	3,516.36	None	Yes
1946.....	6/30/49	517762	7/11/49	8/12/49	796.25	459.08	196.08	6/ 2/50	30.00		
								6/ 8/50	237.50		
								6/12/50	122.69		
								12/22/50	787.81	None	Yes
								10/14/49	273.41		
									.00	$14,384.38	No
1947.....	6/30/49	517763	7/11/49	8/12/49	8,763.12	4,930.90	690.36				
								Total.....		$22,844.50	

* With Recorder of Deeds, St. Louis, Mo., and 8/22/49, St. Louis County, Clayton, Mo.

Exhibit 2.

[fol. 7] (1) Lots Nos. 22-23 inclusive in Block No. 6 of the Taylor Subdivision in Survey 3300 and in Block No. 3715 of the City of St. Louis, together fronting 100 feet on the South line of Maffitt Avenue by a depth Southwardly of 145 feet to an alley. Record title in the name of Vaughn C. Payne and Edith M. Payne, his wife, as tenants by the entirety.

(2) Lot in Block 5638 of the City of St. Louis, formerly Block 4473 of the City of St. Louis, fronting 56 feet on the East line of Wagoner Place by a depth Eastwardly of 117 feet to an alley. Bounded South by property now or formerly of Woerheide Realty and Improvement Company, North by a line 28 feet South of the South line of North Market Street, or property now or formerly of John F. Cook. Record title in the names of Vaughn C. Payne and Edith E. Payne, his wife, as tenants by the entirety.

(3) A parcel of ground in Block No. 4578 of the City of St. Louis, beginning at the intersection of the South line of Washington Boulevard and the East line of Taylor Avenue, thence Southwardly along the East line of Taylor Avenue 78 feet 9 inches, thence Eastwardly and parallel with the South line of Washington Boulevard 45 feet, thence Southwardly and parallel with the East line of Taylor Avenue 5 feet, thence Eastwardly and parallel with the South line of Washington Boulevard 30 feet, thence Southwardly parallel with the East line of Taylor Avenue 35 feet, thence Eastwardly and parallel with the South line of Washington Boulevard 25 feet, thence Northwardly and parallel with the East line of Taylor Avenue 118 feet 9 inches, thence Westwardly along the South line of Washington Boulevard 100 feet to the point of beginning. Record title in the name of Edith Pruitt Payne.

[fol. 8] Summons.

To the above named Defendants:

You are hereby summoned and required to serve upon Harry C. Richards, Esq., plaintiff's attorney, whose ad-

dress is Room 402, New Federal Bldg., 12th & Market Sts., St. Louis 1, Missouri, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES J. O'CONNOR,
Clerk of Court.

ANNICE W. KINDER,
[Seal of Court] Deputy Clerk.

Date: August 27, 1953.

[fol. 9] (Answer of Defendant, Vaughn C. Payne, to Complaint.)

(Filed in U. S. District Court on September 21, 1953.)

The defendant Vaughn C. Payne denies any and all connection or association in any capacity with any of the other defendants listed in plaintiff's complaint with the exception of Edith Pruitt Payne, with whom defendant Vaughn C. Payne is legally associated through marriage.

Count One.

1. "This action is brought pursuant to 28 U. S. C., Section 1396. It is authorized by Commissioner of Internal Revenue and directed by the Attorney General of the United States."

The action brought pursuant to 28 U. S. C., Section 1396 does not pertain to defendant Vaughn C. Payne. Defendant Vaughn C. Payne not liable. *Liability never proven due* and therefore this action of the plaintiff is illegal and void.

2. "The defendants Vaughn C. Payne and Edith Pruitt Payne are husband and wife. Each of them resides within the Eastern District of Missouri." True.

3. "Vaughn C. Payne duly filed his individual income tax returns for each of the years 1942-1947, both inclusive.

Thereafter the Commissioner of Internal Revenue assessed additional income taxes, penalties, and interest against Vaughn C. Payne, for each of the years 1942-1947, both inclusive, as shown in Exhibit 1 to this complaint, which is incorporated herein by reference."

[fol. 10] 3. False. (*true.* Defendant Vaughn C. Payne duly filed and paid his income tax returns for each of the years 1942-1947, both inclusive and paid twice in 1945.) The Commissioner of Internal Revenue assessed *arbitrarily* under defendant Vaughn C. Payne's *protest*; The Commissioner used illegal methods to assess, namely, net worth check," as shown in defendant's Exhibit to the answer of plaintiff's complaint. Mertens, "Law of Federal Income Taxation," Volume 1, section 3.21 states an erroneous administrative interpretation is void. The Commissioner may not make an *arbitrary* or unreasonable regulation, nor can the Treasury Department repeal or enlarge scope of statute, *supply a supposed omission*, create an exemption, limit any rights thereunder, nullify a prior judicial construction of the statute, alter or amend it in any way, particularly where an income tax might be so converted to a capital levy. Section 1.10—What is not income cannot be made income by Congress or regulations. "No part of said assessed tax liabilities has been paid, except as shown in Exhibit 1." False. No tax liability *proved valid, existent or due*. Plaintiff confiscated under defendant's protest, defendant's moneys and made it appear as though defendant admitted his guilt and was paying for same. Section 4.09—Requirement as to Due Process of Law Under Fifth Amendment. The assessment of the Commissioner was *so arbitrary as to amount to a confiscation.*

4. "Vaughn C. Payne is indebted to the plaintiff for its taxes, as shown in Exhibit 1." False. No indebtedness exists in defendant Vaughn C. Payne's case and no liability proven due at any time by the plaintiff. The Commissioner at no time proved by due process of the law the indebtedness of the defendant. I. R. C. 1112. Mertens, "Law of Federal Income Taxation," section 55.19—Burden of Proof Upon Commissioner, section 50.67—Burden of Proof in Fraud Cases, section 55.37—The Tax Attempted to Be Evaded Must Be Due, section 55.09, 55.10—Ad

Valorem 50% Fraud Penalty entitled defendant to a jury trial on the issues.

5. "Interest accrued on the tax indebtedness of Vaughn C. Payne until paid, but no part of said accrued interest has been paid." False. No tax indebtedness exists nor proven by due process of the law therefore no interest can accrue on that which does not exist.

[fol. 11] 5. continued: On Exhibit 1, plaintiff contradicts complaint 5, on Exhibit 1 shows in last column accrued interest to be paid for the years 1942, 1945 and 1946. Defendant, Vaughn C. Payne's Exhibit shows penalties and interest taken out on Deputy Collector's Receipt for Taxes illegally confiscated. Plaintiff's Exhibit 1 shows no penalties paid, which is another contradiction and inconsistency.

Count Two.

6. "The plaintiff restates all that is alleged in Count One of this complaint." The defendant likewise restates all that defendant alleged in Count One of defendant's answer to complaint.

7. "Vaughn C. Payne, at various times after January 1, 1942, being then indebted to the plaintiff for its taxes, and not then having otherwise sufficient property to pay his outstanding tax liabilities, transferred his assets to himself and Edith Pruitt Payne, as joint tenants or tenants by the entirety." Defendant Vaughn C. Payne denies plaintiff's statements. No tax indebtedness and no assets transferred at any time. Defendant restates all that is alleged in numbers three and four of Count One.

8. "Vaughn C. Payne and Edith Pruitt Payne purchased with said transferred assets certain real property located in the Eastern District of Missouri which they have ever since held as tenants by the entirety. The real property so purchased is more specifically described in Exhibit 2 to this complaint, which is incorporated herein by reference." False. No purchase made with transferred assets. Properties on plaintiff's Exhibit 2 numbers 1 and 2 were originally purchased by Vaughn C. Payne and Edith Pruitt Payne as tenants by the entirety and were reported as such

on income tax returns. Real property on Exhibit 2 number 2 was checked by Revenue agent N. B. Eshelman and an additional tax was paid in 1945. Property listed as number 3 on plaintiff's Exhibit 2 has never been purchased by the defendant Vaughn C. Payne or purchased or held as tenants by the entirety by Vaughn C. Payne and Edith Pruitt Payne. The defendant Vaughn C. Payne denies plaintiff's complaint as to number 3 of Exhibit 2 and has no connection with this real property. Section 17.01 states, "It is axiomatic, however, that the government can only tax the *right taxpayer*." Section 17.02—The Effect of the Relationship of Husband and Wife. Section 12.61—Existence of Definite Liability as Essence of Accrual.

[fol. 12] Count Three.

9. "The plaintiff restates all that is alleged in Count One of this complaint." Defendant restates all that is alleged in Count One and Two of the defendant's answer to plaintiff's complaint.

10. "At various times after January 1, 1942, Vaughn C. Payne, being then indebted to the plaintiff for its taxes, and not having otherwise sufficient property to pay his outstanding tax liabilities, purchased certain real property located in the Eastern District of Missouri, more specifically described in Exhibit 2 to this complaint." False. No indebtedness existed and no outstanding tax liabilities. Defendant Vaughn C. Payne and defendant Edith Pruitt Payne originally purchased real property listed as numbers 1 and 2 on plaintiff's Exhibit 2 jointly or as tenants by the entirety. Defendant Vaughn C. Payne denies any connection in any and all years with real property listed on plaintiff's Exhibit 2 number 3.

11. "Title to all of said real property was taken by Vaughn C. Payne and Edith Pruitt Payne as tenants by the entirety and has ever since been so held." False. Title to properties mentioned in numbers 1 and 2 of plaintiff's Exhibit 2 was taken by Vaughn C. Payne and Edith Pruitt Payne as tenants by the entirety when originally purchased. Title to property number 3 on plaintiff's Exhibit 2 *was never* at any time taken by Vaughn C. Payne

and Edith Pruitt Payne. Defendant Vaughn C. Payne had no connection with real property number 3 on plaintiff's Exhibit 2 at any time or in any capacity.

12. "Vaughn C. Payne and Edith Pruitt Payne took title to the real property listed in Exhibit 2 as tenants by the entirety in order to defraud the creditors of Vaughn C. Payne, including the plaintiff." False. Defendant Vaughn C. Payne and Edith Pruitt Payne took title to real properties number 1 and 2 on plaintiff's Exhibit 2 *originally* as tenants by the entirety, but *not* in order to defraud any creditors of Vaughn C. Payne. Defendant Vaughn C. Payne had *no creditors* to defraud. No indebtedness or tax liabilities ever proven by due process of the law. Defendant Vaughn C. Payne and Edith Pruitt Payne *never* took title as tenants by the entirety of real property number 3 on plaintiff's Exhibit 2. Defendant Vaughn C. Payne had no connection with this real property.

[fol. 13] Count Four.

13. "The plaintiff restates all that is alleged in Count One of this complaint." Defendant restates all that is alleged in Count One, Two, and Three of defendant's answer to plaintiff's complaint.

14. "Vaughn C. Payne, at various times after January 1, 1942, being then indebted to the plaintiff for its taxes, and not having otherwise sufficient property to pay his outstanding tax liabilities, transferred his assets to Edith Pruitt Payne." False. Defendant Vaughn C. Payne is not at present and has never been in the past, indebted to the plaintiff for taxes and has no outstanding tax liabilities. No tax indebtedness and no assets transferred to Edith Pruitt Payne at any time. Defendant Vaughn C. Payne denies the plaintiff's statements.

Count Five.

15. "The plaintiff restates all that is alleged in Counts Three and Four of this complaint." Defendant Vaugh C. Payne restates all that is alleged in Counts One, Two,

Three and Four of defendant's answer to plaintiff's complaint.

16. "This action is also based on 26 U. S. C., Section 3678." The defendant's answer is also based on 26 U. S. C., Section 3678. Defendant Vaughn C. Payne denies any connection with real property number 3 on plaintiff's Exhibit 2. Property listed as numbers 1 and 2 on plaintiff's Exhibit 2 was purchased originally by defendant Vaughn C. Payne and defendant Edith Pruitt Payne as tenants by the entirety or jointly. Section 49.163—Distraint is Limited to the Property of Taxpayer. Section 54.49—Partnership Property. No indebtedness or tax liabilities and no transfer of assets in regards to defendant Vaughn C. Payne. Therefore, plaintiff's action under 26 U. S. C., Section 3678 regarding suit to enforce lien on property is illegal and void. Plaintiff has been and still is collecting by *confiscation*, (using illegal liens from 1949 up to and through the present date) from defendant Vaughn C. Payne.

17. "Each of the defendants is a resident of the Eastern District of Missouri." True.

[fol. 14] 18. "The plaintiff acquired liens for taxes against all property and rights to property of Vaughn C. Payne on the dates the assessment lists on which taxes were assessed against him were received by the Collector of Internal Revenue, and for the amounts assessed, as shown in Exhibit 1." Defendant Vaughn C. Payne denies the existence of valid liens and existence of valid assessment. No tax proven due, no fraud proven, an arbitrary assessment was made, and defendant never proven liable to plaintiff by due process of law.

19. "The plaintiff acquired liens for its taxes against all property and rights to property of Edith Pruitt Payne on the dates when Vaughn C. Payne, not having otherwise sufficient property to pay his outstanding tax liabilities, transferred his assets to her, and for the value of such transferred assets." Defendant Vaughn C. Payne denies the legal existence of tax liabilities and also denies he transferred his assets to Edith Pruitt Payne.

20. "Upon information and belief, the defendant, Marjorie Mitchell Bell, formerly Marjorie Mitchell, claims an

interest in certain real property of Vaughn C. Payne." False. Defendant Vaughn C. Payne denies any claim Marjorie Mitchell Bell, formerly Marjorie Mitchell, claims or believes to have in certain real property of Vaughn C. Payne and any claim or interest is illegal and void, as defendant Vaughn C. Payne has never in any capacity had any personal or business dealings or had any knowledge of the existence of a so-called Marjorie Mitchell Bell, or Marjorie Mitchell. Defendant denies plaintiff's statement.

21. "Upon information and belief, each of the defendants J. F. Schrontz and Samuel Z. Morganstern claims an interest in certain real property of Edith Pruitt Payne." This is not pertinent to defendant Vaughn C. Payne.

[fol. 15] 22. "The liens of the plaintiff are prior in right to any right, title or interest of any of the defendants in the property of Vaughn C. Payne and the property of Edith Pruitt Payne." Defendant Vaughn C. Payne denies the existence and validity of plaintiffs and any of the other defendants rights in the property of defendant Vaughn C. Payne. Wherefore defendant Vaughn C. Payne and defendant Edith Pruitt Payne are tenants by the entirety (through original purchase and not by transfer of assets of defendant Vaughn C. Payne) of real property in plaintiff's Exhibit 2, numbers 1 and 2 only. Defendant Vaughn C. Payne has no connection with defendant Edith Pruitt Payne as to real property listed on plaintiff's Exhibit 2, number 3, or any of the other defendants. Therefore, plaintiff has no legal liens against defendant Vaughn C. Payne and therefore no existent right, title or interest in property of defendant. Nor do any of the other defendants have any right, title or interest in the property of Vaughn C. Payne.

Wherefore, the defendant Vaughn C. Payne demands satisfaction one hundred times amount plaintiff asks judgment. Defendant states the illegal trespass, undue hardship, strain, stress, and unjust treatment, ruination of name and reputation, making defendant appear to be guilty, unjust treatment, violation of Constitutional, Civil, Federal and State Laws, denying defendant equal protection of the law, reducing defendant's position to one of

involuntary servitude, employing gestapo and Communistic methods to shakedown defendant, illegally placing defendant in position of "guilty until proven innocent," refusing to accept the true facts and records as they exist, placing liabilities of third parties on defendant, and framed defendant with a fictitious, false, assumption only, based on an illegal net worth check by which plaintiff framed, tried, and convicted and punished defendant without following legal procedure—due process of the law, violating the law of entirety, making public amount never proven due and which plaintiff has never proved existed in defendant Vaughn C. Payne's instance, etc.

[fol. 16] Wherefore, the defendant demands: removal of his name from plaintiff's claims and complaint, all complaints of the plaintiff to be dissolved and voided; defendant Vaughn C. Payne demands the release of his salary, clearance of name and satisfaction in the amount equal to the unjust and unconstitutional trespasses committed against defendant Vaughn C. Payne by the plaintiff, plus interest which may have accrued, plus damages, plus amount which was illegally confiscated from defendant Vaughn C. Payne through and by the plaintiff.

ELLIS OUTLAW,
Attorney.

[fol. 17] (Answer of Defendant, Edith Pruitt Payne to Complaint.)

(Filed in U. S. District Court on September 21, 1953.)

Defendant Edith Pruitt Payne states that plaintiff has no legal right or authority to implicate and involve her person in the fictitious tax liabilities of defendant Vaughn C. Payne from 1942-1947, inclusive. The only association defendant Edith Pruitt Payne has with defendant Vaughn C. Payne is legally through marriage. Defendant Vaughn C. Payne is not liable for the personal or private business transactions of defendant Edith Pruitt Payne.

Count One.

1. "This action is brought pursuant to 28 U. S. C., Section 1396. It is authorized by Commissioner of Internal Revenue and directed by the Attorney General of the United States." Plaintiff's action pursuant to 28 U. S. C., Section 1396, is not pertinent to defendant Edith Pruitt Payne. Defendant Edith Pruitt Payne is *not liable* and no liability ever proven existent or due. Therefore, this action of the plaintiff is illegal and void.

2. "The defendants Vaughn C. Payne and Edith Pruitt Payne are husband and wife. Each of them resides within the Eastern District of Missouri." True.

[fol. 18] "Vaughn C. Payne duly filed his individual income tax returns for each of the years 1942-1947, both inclusive. Thereafter the Commissioner of Internal Revenue assessed additional income taxes, penalties, and interest against Vaughn C. Payne, for each of the years 1942-1947, both inclusive, as shown in Exhibit 1 to this complaint, which is incorporated herein by reference. No part of said assessed tax liabilities has been paid, except as shown in Exhibit 1." This is not pertinent to defendant Edith Pruitt Payne.

4. "Vaughn C. Payne is indebted to the plaintiff for its taxes, as shown in Exhibit 1." This does not pertain to defendant Edith Pruitt Payne.

5. "Interest accrued on the tax indebtedness of Vaughn C. Payne until paid, but no part of said accrued interest has been paid." This does not pertain to defendant Edith Pruitt Payne.

Count Two.

6. "The plaintiff restates all that is alleged in Count One of this complaint." The defendant restates all that is alleged in Count One of defendant's answer to the plaintiff's complaint.

7. "Vaughn C. Payne, at various times after January 1, 1942, being then indebted to the plaintiff for its taxes, and not then having otherwise sufficient property to pay his

outstanding tax liabilities, transferred his assets to himself and Edith Pruitt Payne, as joint tenants or tenants by the entirety." False. Defendant Edith Pruitt Payne denies any and all connection with defendant Vaughn C. Payne with reference to plaintiff's statement regarding defendant Vaughn C. Payne transferring his assets to defendant Edith Pruitt Payne. Defendant Vaughn C. Payne did not at any time either before or after marriage transfer any assets to defendant Edith Pruitt Payne.

8. "Vaughn C. Payne and Edith Pruitt Payne purchased with said transferred assets certain real property located in the Eastern District of Missouri which they have ever since held as tenants by the entirety. The real property so purchased is more specifically described in Exhibit 2 to this complaint, which is incorporated herein by reference."

[fol. 19] 8. continued: Defendant Vaughn C. Payne and defendant Edith Pruitt Payne did not purchase any real property at any time with transferred assets. Real property listed on plaintiff's Exhibit 2 numbers 1 and 2 were purchased originally by defendants Vaughn C. Payne and Edith Pruitt Payne as tenants by the entirety. (tax paid) reported & Real property listed on plaintiff's Exhibit 2 number 3 *was never purchased by defendant Vaughn C. Payne.* Defendant Edith Pruitt Payne with *gift assets* (*Not* from defendant Vaughn C. Payne) and her own assets took an *option only* with temporary assignment of rents in January 1948 on real property number 3 of plaintiff's Exhibit 2. This transaction was reported by defendant Edith Pruitt Payne on income tax return filed jointly for the first time with defendant Vaughn C. Payne on 1948 tax return. Defendant Edith Pruitt Payne was not a wage earner and previous to 1948 had no taxable liabilities.

Count Three.

9. "The plaintiff restates all that is alleged in Count One of this complaint." Defendant restates all that is alleged in Count One and Two of defendant's answer to plaintiff's complaint.

10. "At various times after January 1, 1942, Vaughn C. Payne, being then indebted to the plaintiff for its taxes, and not then having otherwise sufficient property to pay his outstanding tax liabilities, purchased certain real property located in the Eastern District of Missouri, more specifically described in Exhibit 2 to this complaint." Not pertinent to defendant Edith Pruitt Payne. Real property listed as number 3 on plaintiff's Exhibit 2 is not pertinent to defendant Vaughn C. Payne. Vaughn C. Payne has no connection in any capacity with number 3 of plaintiff's Exhibit 2. Mertens, "Law of Federal Income Taxation," section 60.08—Cases Involving Determination of the Proper Taxpayer. "It is axiomatic that a tax to be valid, must be levied on the proper taxpayer."

11. "Title to all of said real property was taken by Vaughn C. Payne and Edith Pruitt Payne as tenants by the entirety and has ever since been so held." Defendants Vaughn C. Payne and Edith Pruitt Payne *originally purchased* real properties number 1 and 2 on plaintiff's Exhibit 2 as tenants by the entirety. Real property [fol. 20] 11. continued: Number 3 on plaintiff's Exhibit 2 does not pertain to defendant Vaughn C. Payne. Mertens, "Law of Federal Income Taxation," section 12.61—Existence of Definite Liability as Essence of Accrual. A nonexistent liability cannot be accrued.

12. "Vaughn C. Payne and Edith Pruitt Payne took title to the real property listed in Exhibit 2 as tenants by the entirety in order to defraud the creditors of Vaughn C. Payne, including the plaintiff." False. Defendant Vaughn C. Payne and defendant Edith Pruitt Payne originally purchased real properties number 1 and 2 on plaintiff's Exhibit 2 as tenants by the entirety. Defendants Vaughn C. Payne and Edith Pruitt Payne *denies* having purchased said properties in order to defraud any creditors of Vaughn C. Payne, including plaintiff, as defendant Vaughn C. Payne had no creditors, including plaintiff. Real property number 3 on plaintiff's Exhibit 2 was not purchased as tenants by the entirety by defendants Vaughn C. Payne and Edith Pruitt Payne at any time. Defendant Vaughn C. Payne does not have in the present nor did he ever have in the past any connection in any capacity with real property number 3 on plaintiff's Exhibit 2.

Count Four.

13. "The plaintiff restates all that is alleged in Count One of this complaint." Defendant Edith Pruitt Payne restates all that is alleged in all Counts of defendant's answer to plaintiff's complaint.

14. "Vaughn C. Payne, at various times after January 1, 1942, being then indebted to the plaintiff for its taxes, and not then having otherwise sufficient property to pay his outstanding tax liabilities, transferred his assets to Edith Pruitt Payne." Defendant Vaughn C. Payne never at any time transferred any assets to defendant Edith Pruitt Payne. Mertens, "Law of Federal Income Taxation," section 53.10, states the transferor must have been *liable*. Section 53.26—Liability of Transferor Is Essential to Transferee Liability. The plaintiff placed a non-existent liability on defendant Vaughn C. Payne with which the defendant Vaughn C. Payne had no connection and which plaintiff never proved connection and plaintiff is now trying to collect from defendant Edith Pruitt Payne the arbitrary, non-existent tax liabilities of defendant Vaughn C. Payne, which plaintiff has never proven due according to law.

[fol. 21] Count Five.

15. "The plaintiff restates all that is alleged in Counts Three and Four of this complaint."

15. continued: The defendant Edith Pruitt Payne restates all that is alleged in all Counts of defendant's answer to plaintiff's complaint.

16. "This action is also based on 26 U. S. C., Section 3678." Section 3678 is void regarding defendant Edith Pruitt Payne. No liability exists or ever proven due. No legal liens.

17. "Each of the defendants is a resident of the Eastern District of Missouri." True.

18. "The plaintiff acquired liens for taxes against all property and rights to property of Vaughn C. Payne on

the dates the assessment lists on which taxes were assessed against him were received by the Collector o. Internal Revenue, and for the amounts assessed, as shown in Exhibit 1." Not pertinent to defendant Edith Pruitt Payne.

19. "The plaintiff acquired liens for its taxes against all property and rights to property of Edith Pruitt Payne on the dates when Vaughn C. Payne, not having otherwise sufficient property to pay his outstanding tax liabilities, transferred his assets to her, and for the value of such transferred assets." Defendant Vaughn C. Payne has *never transferred any assets* to defendant Edith Pruitt Payne. Plaintiff's liens are void, as defendant Vaughn C. Payne has no connection with number 3 on plaintiff's Exhibit 2. Mertens, "Law of Federal Income Taxation," section 54.47—Property Affected by Tax Liens. Section 49.163—Distraint is Limited to the Property of the Taxpayer. Section 4.09—Requirement as to Due Process of the Law Under Fifth Amendment, section 4.13—Requirement of Uniformity Under the Constitution, section 54.49—Partnership Property.

20. "Upon information and belief, the defendant Marjorie Mitchell Bell, claims an interest in certain real property of Vaughn C. Payne." Not pertinent to defendant Edith Pruitt Payne. Defendant Vaughn C. Payne has no connection with real property number 3 on plaintiff's Exhibit 2.

21. "Upon information and belief, each of the defendants J. F. Schrontz and Samuel Z. Morganstern claims an interest in certain real property of Edith Pruitt Payne."

[fol. 22] 21. continued: Each of the defendants J. F. Schrontz and Samuel Z. Morganstern had *no claim or interest in any property* of defendant Edith Pruitt Payne for the years in question, 1942-1947, both inclusive. Defendant Edith Pruitt Payne had no connection with real property number 3 on plaintiff's Exhibit 2 for the years 1942-1947, both inclusive. (continued on page 7)

Summary.

Strictly as a courtesy to the plaintiff, the defendant Edith Pruitt Payne has answered the plaintiff's complaint. The defendant is in no manner connected in the tax liabilities of defendant Vaughn C. Payne for the years 1942-1947, both inclusive. Edith Pruitt Payne was not a wage earner nor did she have any taxable liabilities from 1942 through 1947. Plaintiff has deliberately involved and implicated defendant Edith Pruitt Payne in the fictitious case that was never proven true against defendant Vaughn C. Payne. However, since the defendant Edith Pruitt Payne is not connected in any way with the false accusations and fictitious assumptions forced on defendant Vaughn C. Payne by the plaintiff, who resorted to Gestapo and Communistic tactics in order to deliberately frame an individual of a minority race, the defendant will enclose her proof, as well as the laws violated by the plaintiff against Edith Pruitt Payne.

[fol. 23] 21. continued: Plaintiff's action brought pursuant to 28 U. S. C., Section 1396, and 26 U. S. C., Section 3678, is illegal and void regarding defendant Edith Pruitt Payne. Defendant Edith Pruitt Payne not liable and no liability ever proven due.

22. "The liens of the plaintiff are prior in right to any right, title or interest of any of the defendants in the property of Vaughn C. Payne and the property of Edith Pruitt Payne." Not pertinent, as defendant Vaughn C. Payne and defendant Edith Pruitt Payne are in no way connected with real property number 3 on plaintiff's Exhibit 2. Real properties number 1 and 2 on plaintiff's Exhibit 2 originally purchased as tenants by the entirety and have been tax paid and reported since 1945. Liens are void. Plaintiff has no legal liens against either defendants Vaughn C. Payne or Edith Pruitt Payne.

Wherefore, the defendant Edith Pruitt Payne demands: the removal of her name from plaintiff's complaint and all complaints be declared illegal and voided, clearance of name and satisfaction in the amount equal to the illegal trespasses and violations of the law committed against

defendant Edith Pruitt Payne, including illegally implicating and involving of defendant with the non-existent fictitious tax liabilities of defendant Vaughn C. Payne, the illegal trespass on the rights, privacy and property of Edith Pruitt Payne, violation of law of entirety, illegal confiscation of rent money due defendant Edith Pruitt Payne, plus interest and damages, plus satisfaction for the amount illegally confiscated, which was applied to the so-called liability of a third party, namely defendant Vaughn C. Payne, who plaintiff has *never proven liable* or that a liability even existed.

(Seal) EDITH PRUITT PAYNE.

This is to certify I have read and notarized the same.

Subscribed and sworn before me this 12th day of Sept., 1953.

CARRIE LOU JOHNSON,
Notary Public.

My Commission Expires Mar. 31, 1954.

[fol. 24] (Motion of Defendant, Vaughn C. Payne, to make Complaint more Definite and Certain and for Mis-Joinder Parties Defendant.)

(Filed in U. S. District Court on November 19, 1953.)

Before the Honorable C. J. Moore, Judge of the District Court of the United States Eastern District of Missouri.

Comes now Vaughn C. Payne and moves the court to require the plaintiff to make more definite and certain the following:

(1) Count One.

Paragraph 7 of Count Two, "transferred his assets to himself and Edith Pruitt Payne, etc." What assets, when, if any, and what dates were said assets transferred.

(2) Count Two.

Paragraph Eight, "Vaughn C. Payne and *Edith* Pruitt Payne purchased the said transferred assets as their real property located in the Eastern District of Missouri * * *." That plaintiff be required to state the amount of said assets and the date of transfer.

(3) Count Three.

Paragraph Twelve, that the court require the plaintiff to state the date title was acquired of real property referred to in Exhibit Two, etc.

(4) Count Four.

Paragraph Fourteen, to require the plaintiff to state the times and dates of the transfers of said assets referred to in Count Four of paragraph fourteen.

[fol. 25] Petitioner further moves the court to dismiss as to the defendants Edith Pruitt Payne, Majorie Mitchell Bell, formerly Majorie Mitchell, J. F. Schrontz and Samuel Z. Morganstern, for the reason that said defendants are not the proper parties to this suit and as far as your petitioner is informed they are not indebted nor charged jointly with taxes alleged to be owed by this defendant, Vaughn C. Payne.

Petitioner further moves the court to require the plaintiff to make its complaint more definite and certain as to the matters referred to in order that defendant Vaughn C. Payne may be able to file a proper answer to said suit.

ELLIS S. OUTLAW,
Attorney for Vaughn C. Payne,
3140 Pine Street,
St. Louis 3, Mo., JE 8257.

[fol. 26] (Order of District Court overruling Motions of Defendant, Vaughn C. Payne, to make Complaint more Definite and Certain, and to Dismiss for Mis-Joinder of Parties.)

(Filed in U. S. District Court on December 29, 1953.)

The Court having before it the motion of defendant Vaughn C. Payne to make more definite and certain, and to dismiss for misjoinder of parties, and having examined said motions, It Is Hereby Ordered that both of said motions should be and are hereby overruled.

Dated this 29th day of December, 1953.

GEO. H. MOORE,
United States District Judge.

[fol. 27] (Motion of Defendants, Vaughn C. Payne and Edith Payne, to dismiss Complaint.)

(Filed in U. S. District Court on January 21, 1954.)

Before the Honorable C. J. Moore, Judge of United States District Court for the Eastern Division of the Eastern Judicial District of Mo.

By leave of Court, defendants Vaughn C. Payne and Edith Payne move the court to dismiss the petition of the plaintiff for the reason that said complaint was filed on the 27th day of August, 1953, for taxes due from June, 1942 to 1947 which was more than three years after the tolling of the Statute of Limitation.

ELLIS S. OUTLAW,
Attorney for Defendants,
3968 Enright Avenue,
St. Louis 8, Missouri,
Je. 8257.

(Defendants desire oral argument.)

[fol. 28] (Order of District Court overruling Motion of Defendants, Vaughn C. Payne and Edith Payne, to dismiss Complaint.)

(Filed in U. S. District Court on March 18, 1954.)

The Court having before it the joint motion of defendants Vaughn C. Payne and Edith Payne to dismiss, and having examined said motion, It Is Hereby Ordered that said motion be and the same is hereby overruled.

Dated this 17th day of March, 1954.

GEO. H. MOORE,
United States District Judge.

[fol. 29] (Motion of Defendants, Vaughn C. Payne and Edith Payne, to Dismiss refiled by leave of Court.)

(Filed in U. S. District Court on March 27, 1954.)

Before the Honorable George H. Moore, Judge of the United States District Court for the Eastern Division of the Eastern Judicial Court of Missouri.

By leave of court, defendants Vaughn C. Payne and Edith Payne refile their motion to dismiss on petition of plaintiff and moves the court to dismiss same for the reason that said complaint was filed on the 27th day of August, 1953 for taxes due from June 1942 to 1947, which was more than six (6) years tolling of the statute of limitation.

ELLIS S. OUTLAW,
Attorney for Defendants,
3968 Enright Avenue,
St. Louis, Missouri,
Je. 8257.

Defendants desire oral argument.

[fol. 30] (Narrative Statement of Testimony.)

January 18-20, 1955.

E. M. FLYNN, Assistant Director of Internal Revenue, testified on behalf of the Plaintiff:

"The Certificate of Assessment related to Vaughn C. Payne covering the years 1942 through 1947. Additional assessments for each of the years 1942 through 1947, together with 50% fraud penalties were made against Vaughn Payne on the June 30, 1949 assessment list. The statutory notice of the proposed deficiencies (90 Day Letter sent out Feb. 18, 1949) was addressed to Vaughn C. Payne."

EARL PARKER, Internal Revenue Agent, testified on behalf of the Plaintiff:

"I made an examination of the income tax return of Vaughn C. Payne. * * * I made an inquiry as to whether Mrs. Payne had any independent income prior to December, 1947. My inquiry disclosed that she had none, except from the rental income, from the jointly owned property which is small. * * * It was my conclusion that any assets held in the names of either Edith Payne or Vaughn Payne, Jr. would have come out of the Doctor's earnings.

"The Paynes purchased the Wagoner property in 1944, and the Moffitt Avenue lots in 1945."

MRS. EDITH PRUITT PAYNE testified on behalf of the Plaintiff:

"This is my signature (on the 1942 tax return). I put my signature on it because I helped fill it out. It (the tax return) is only in the one name. I did not file an income tax until 1948. We filed joint returns, and that is when I started having income. * * * I

thought that was where I had to sign because I helped to fill it out. * * *"

Mrs. Edith Pruitt Payne, on cross-examination, testified:

"They were not claiming income tax from me at that time (May, 1948). I had not made a return at that time. I made my first return in 1948, a joint return with Doctor Payne."

Mrs. Edith Pruitt Payne continuing testimony on direct examination by Plaintiff:

"The property on Wagoner was purchased in the entirety. * * * I am the person who negotiated with [fol. 31] the real estate brokers with regard to the purchase at 1918 Wagoner Place. It was in 1944. My husband never participated in those negotiations with the brokers. The same thing is true about Maffitt Avenue. * * * We took our property in the entirety.

"I took an option on the Taylor Avenue property in 1947. * * * They had restrictions which had been broken, but according to law they would not be released until 1950. * * * I gave Mr. Shapiro $2,000 first * * * then on October 7, $6,122 * * *, that consummated what I would call taking an option on the property that was to become a final purchase in 1950. * * * Everybody that was in it were annoyed by Internal Revenue Agents, and I have a letter from a professor of Washington University, moved out because he was annoyed and he could not get any satisfaction who to pay his rent to. * * * The other doctors moved out. * * * Dr. Pyland is one of the tenants that some men came out from the Internal Revenue and took their rent from them, and I knew nothing about it, and they took this rent from him, then they turned around and give him his money back, and one of the men told him he did not know what he was doing, it was kind of orders he had, so he has the cancelled check, and in that way I have had quite a bit of difficulty in renting that building."

HARRY SHAPIRO, JR. testified on behalf of the Plaintiff:

"The property at 536 North Taylor was sold in 1947 to Mrs. Payne."

"Mrs. Payne approached me in connection with the purchase of the Maffitt Avenue lots. * * * Doctor Payne did not participate in the negotiations."

Referring to the Wagoner Place property:

"my negotiations have always been with Mrs. Payne, and at no time have I had any negotiations with the doctor. * * * Title to that property is in Doctor and Mrs. Payne as tenants by the entirety."

"The original transfer, if my memory serves me correctly, to Jeanette Kelly was in the nature of a straw transaction and it was held in Jeanette Kelly's name as a matter of convenience, so actually this is one and the same transaction.

[fol. 32] * * * The property was purchased by Jeanette Kelly on February 1, 1944. * * * To the best of my recollection, on the same date that property was transferred from Jeanette Kelly to Vaughn C. Payne and Edith Payne."

"With regard to the three properties involved, I dealt with Mrs. Payne. * * * I have a slight recollection of having seen Doctor Payne one time, but it was a very short time. I do not think I actually would know the doctor if I met him on the street. * * * All of my business connections have been with Mrs. Payne."

Harry Shapiro, Jr., on cross-examination, testified:

"I sold the property at 536 North Taylor to Mrs. Payne."

HARRY ALTER testified on behalf of the Plaintiff:

"The lot on Maffitt Avenue was sold to Mrs. Payne in 1945. * * * The lot was sold to Mrs. Payne, I know, because I never talked to Doctor Payne. * * * The

property was bought in 1945 through my auspices. * * * The buyer was Mrs. Payne."

[fol. 32a] At the close of Plaintiff's case, the Defendants filed a motion for a directed Verdict, which is in the following words:

"Comes now the defendant and moves the Court for a directed verdict for the reason that plaintiff has not proved a Prima Facie case against the defendant."

The Court: Very well. The motion is overruled.

Plaintiff's Exhibit 2—First Page.

29

UNITED STATES
INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1942

1942

ORIGINAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS REPORTED ON THE CASH BASIS FOR THE CALENDAR YEAR, IS NOT MORE THAN $5,000, AND CONSISTS WHOLLY OF SALARY, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST OR ANNUITIES.

or fiscal year beginning Jan 1, 1942, and ending Jan 1, 1943

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

Vaughn Colfax Payne
(Name) (Use given names of both husband and wife if this is a joint return)

4645 N. Market St.
(Street and number, or rural route)

St. Louis Mo
(Post office) (County) (State)

Physician
(Occupation) (Social Security number, if any)

(Name and address of employer)

(If more than one employer, attach statement showing name and address and amount received from each)

(Do not use these spaces)

File No. 109

Serial No. 201767

District

(Cashier's Stamp)

1-Missouri

Cash Check M. O.

First Payment $ 2.12

Wages	$	
Int.	$	
Div.	$	166.32
Net Profits	$	
Total	$	34.87
(R.		
(I.		
(B.		
Initials		
Sect.	$	517758
Sect. No.		JUN 1940
Line		

INCOME

	Amount	Deductible Expenses (Explain on separate statement)	
1. Salaries and other compensation for personal services,	$6406.20	$4286.63	$
2. Dividends			
3. Interest on bank deposits, notes, etc.			
4. Interest on corporation bonds, etc.	$	Less amortizable bond premium $	$
5. Interest on Government obligations, etc.			
(a) From line (h), Schedule A	$		$
(b) From line (i), Schedule A	$		$
6. Rents and royalties. (From Schedule B)			
7. Annuities			

ITEMS 8, 9, AND 10, BELOW (AND PAGES 3 AND 4) NEED NOT BE CONSIDERED UNLESS YOU HAVE INCOME (OR LOSSES) IN ADDITION TO ITEMS ABOVE

8. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule F)
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)
9. Net profit (or loss) from business or profession. (From Schedule H)
(Gross total receipts, from line 1, Schedule H, $)
10. Income (or loss) from partnerships, fiduciary income, and other income. (From Schedule I)
11. Total income in items 1 to 10 $ 6406 20

DEDUCTIONS

12. Contributions paid. (Explain on Schedule C)	$ 102	00
13. Interest. (Explain on Schedule C)	43	81
14. Taxes. (Explain on Schedule C)	267	29
15. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain on Schedule C)		
16. Bad debts (Explain on Schedule C)		

MAR 1943
RECEIVED

3. Interest on bank deposits, notes, etc				
4. Interest on corporation bonds, etc.		$	Less amortizable bond premium $	
5. Interest on Government obligations, etc.				
(a) From line (h), Schedule A		$	$	
(b) From line (f), Schedule A		$	$	
6. Rents and royalties. (From Schedule B)				
7. Annuities, etc.				
IF ITEMS 8, 9, AND 10, BELOW (AND PAGES 3 AND 4) NEED NOT BE CONSIDERED UNLESS YOU HAVE INCOME (OR LOSSES) IN ADDITION TO ITEMS ABOVE				
8. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule F)				
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)				
9. Net profit (or loss) from business or profession. (From Schedule H)				
Gross total receipts, from line 1, Schedule H, $)				
10. Income (or loss) from partnerships, fiduciary income, and other income. (From Schedule I)				
11. Total income in items 1 to 10				$ 4286 63
DEDUCTIONS				
12. Contributions paid. (Explain in Schedule C)			$ 102 00	
13. Interest. (Explain in Schedule C)			213 91	
14. Taxes. (Explain in Schedule C)			267 29	
15. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule C)				
16. Bad debts. (Explain in Schedule C)				
17. Other deductions authorized by law. (Explain in Schedule C)			3713 33	
18. Total deductions in items 12 to 17				4286 63
19. Net income (item 11 minus item 18)				$ 2120 07

COMPUTATION OF TAX

20. Net income (item 19 above)		$2120 07	27. Normal tax (6% of item 26)		$ 21 48
21. Less: Personal exemption. (From Schedule D-1)	$ 1250 00		28. Surtax on item 23. (See Instructions 28)		74 11
22. Credit for dependents (From Schedule D-2)	300 00	1550 00	29. Total (item 27 plus item 28)		$ 95 59
23. Balance (surtax net income)		$ 570 07	30. Total tax (Item 29 or line 16, Schedule F)		$
24. Less: Item 5 (a) above	$		31. Less: Income tax paid at source	$	
25. Earned income credit (From Schedule I, Line E 2)	210 01	210 01	32. Tax paid to a foreign country or U. S. possession (Attach Form 1116)		
26. Balance subject to normal tax		$ 360 06	33. Balance of tax (Item 30 minus items 31 and 32)		$ 95 59

I/we declare, under the penalties of perjury, that this return (including any accompanying schedules and statements) has been examined by me/us and to the best of my our knowledge and belief is a true, correct, and complete return made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

(Signature of person (other than taxpayer or agent) preparing return) (Date)

(Address of firm or employer if any)

(Signature of taxpayer) Filed 3/11/43

If this is a joint return (not made by agent) it must be signed by both husband and wife. If return is made by agent it must be accompanied by power of attorney. (Over)

33

[fol. 34] (Motion of Defendants to stay Execution pending Determination of a Motion for New Trial.)

(Filed in U. S. District Court on April 21, 1955.)

Before: The Honorable Judge George H. Moore

Petitioner states that plaintiff has advertised in the St. Louis Daily Record, for sale, of his property, on the 6th day of May 1955. On the last motion day, your Honor, passed date for motion to be heard on the date of the sale.

Petitioner further states, he believes said sale would be unfair to him under said circumstances in the advent that the court ruled in favor of his motion. The sale on that date is unnecessary and would be a hardship on petitioner: Therefore your petitioner prays the court for an order staying execution for said sale until Your Honor, has passed on motion for a new trial, under rule 62B, title 28, page 3321, United States 1946 code., which reads as follows:

> "In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial."

Petitioner further states that Government has ample assets in the value of these three pieces of property upon which they have lien for the protection of the amount which Your Honor entered judgment January 20, 1955.
Respectfully submitted by,

ELLIS S. OUTLAW,
Attorney Defendants,
3968 Enright Avenue,
St. Louis 8, Missouri,
JE 3-8257.

Oral argument desired by Counsel.

[fol. 35] (Motion of Defendants for Judgment in accordance with Motion for Directed Verdict, or in the Alternative for a New Trial.)

(Filed in U. S. District Court on January 20, 1955.)

(Refiled in U. S. District Court on April 1, 1955.)

Come now Vaugin C. Payne and Edith Pruitt Payne, defendants in the above entitled cause within ten (10) days after the trial and rendition of the verdict and the entry of judgment thereon and move the court to grant defendants a new trial herein for the following reasons, to-wit:

1. Because the verdict is against the evidence.

2. Because the verdict is against the weight of the evidence.

3. Because the verdict is contrary to the law.

4. Because the verdict is contrary to the law, the evidence and the law under the evidence.

5. Because the verdict is for the wrong party and should have been for defendants.

6. Because the verdict of the jury is wholly unsupported by any legal or competent evidence.

7. Because the court erred in allowing plaintiff to introduce over the objections of defendants irrelevant, incompetent, immaterial and prejudicial evidence.

8. Because the court erred in refusing to permit defendants to introduce legal, competent, relevant, material and proper evidence offered by defendants.

9. Because the court failed to grant a directed verdict at the close of plaintiff's case and at the close of the whole case.

ELLIS S. OUTLAW,
Attorney for Defendants,
3968 Enright Avenue,
St. Louis 8, Missouri,
JE 3-8257.

[fol. 36] (Entry of Appearance of Claude I. Bakewell as Counsel for Defendants, Vaughn C. Payne and Edith Pruitt Payne.)

(Filed in U. S. District Court on June 3, 1955.)

Claude I. Bakewell enters his appearance as Associate Counsel for Defendants, Vaughn C. Payne and Edith Pruitt Payne.

CLAUDE I. BAKEWELL.

[fol. 37] Amended Findings of Fact and Conclusions of Law.

(Filed in U. S. District Court on March 22, 1956.)

United States District Court
Eastern District of Missouri

United States of America,
Plaintiff,

v.

Vaughn C. Payne, Edith Pruitt Payne, Marjorie Mitchell Bell, J. F. Schrontz and Samuel Z. Morganstern,
Defendants.

Civil No. 9366 (1)

This action having come on for trial on January 17, 1955, and the plaintiff and the defendants Vaughn C. Payne and Edith Pruitt Payne having appeared by counsel and the defendant J. F. Schrontz having filed his affidavit herein by permission of the Court and with the consent of the remaining parties, and the Court having considered the evidence adduced by the parties and the arguments of counsel, and having heretofore entered its findings of fact and conclusions of law and judgment order, and defendants Vaughn C. Payne and Edith Pruitt Payne having made a motion for new trial which the Court has allowed in part, and the Court having considered the briefs and arguments of the parties and determined to modify its findings of fact and conclusions of law previously entered

herein, the Court now finds the facts and states its conclusions of law as amended, as follows:

Findings of Fact.

1. This action was brought pursuant to the authorization of the Commissioner of Internal Revenue and the direction of the Attorney General of the United States.

2. The defendants Vaughn C. Payne and Edith Pruitt Payne, husband and wife, are residents of this District. They filed their joint income tax return for the taxable year 1942, and Vaughn C. Payne filed his individual income tax return for the taxable years 1943 through 1947, inclusive, with the then Collector of Internal Revenue for the First Collection District of Missouri, and paid the taxes shown thereon.

[fol. 38] 3. Thereafter the Commissioner of Internal Revenue made an investigation of the income tax liabilities of Vaughn C. Payne and Edith Pruitt Payne for the year 1942, and of Vaughn C. Payne for the years 1943 through 1947. This investigation disclosed that Doctor and Mrs. Payne had not maintained records sufficient to permit an accurate determination of their income for the year 1942 or of Doctor Payne's income for the years 1943 through 1947. The records maintained by Doctor and Mrs. Payne were in fact insufficient for the determination of their correct income for those years.

4. Because of the inadequacy of the records maintained by Doctor and Mrs. Payne, the Commissioner of Internal Revenue reconstructed their income for the years 1942 through 1947, inclusive, by the use of an analysis of their net worth and expenditures during that period. While the analysis made by the Commissioner showed the net worth of both Doctor and Mrs. Payne from December 31, 1941 through December 31, 1947, all items of income from December 31, 1942, through December 31, 1947, attributable to Mrs. Payne could be and were in fact eliminated from that analysis in the determination of the unreported income of Doctor Vaughn C. Payne for the years 1943 through 1947, inclusive.

5. The Commissioner of Internal Revenue, on his June 30, 1949, assessment list, assessed additional income taxes, fraud penalties, and interest against Vaughn C. Payne as shown in the following table:

Assessment			Assessed		
Year	Date	Account No.	Inc. Tax	Penalties	Interest
1942.....	6/30/49	517758	$ 444.38	$ 222.19	$249.90
1942.....	6/16/49	557909	47.79	.....	19.29
1943.....	6/30/49	517759	2,846.78	1,423.39	967.50
1944.....	6/30/49	517760	3,552.63	1,906.74	919.35
1945.....	6/30/49	517761	1,666.89	941.50	907.97
1946.....	6/30/49	517762	796.25	459.08	196.08
1947.....	6/30/49	517763	8,763.12	4,930.90	690.36

[fol. 39] 6. These assessments were based on the existence of unreported income disclosed by the foregoing net worth analysis. The aforesaid assessment list was received by the then Collector of Internal Revenue for the First Collection District of Missouri on July 11, 1949 (except for a 1942 deficiency assessment of tax in the amount of $47.79 and interest of $19.29, which was received June 27, 1949) and thereupon the United States acquired liens therefor against the property of Vaughn C. Payne. Notices of the said liens were filed with the Recorder of Deeds for the City of St. Louis, Missouri, August 12, 1949. Notice of these assessments and demand for payment thereof was served on defendant Vaughn C. Payne on July 1, 1949.

7. The balance owing upon the foregoing assessments at the time of trial was $19,799.21 on account of the 1944 and 1947 assessments, plus interest on all stated assessments for 1942-1947, inclusive, from the dates thereof.

8. The aforesaid net worth anatysis made by the Commissioner of Internal Revenue for Vaughn C. Payne and Edith Pruitt Payne was reasonably accurate, and fully supported the conclusion of the Commissioner that Vaughn C. Payne had received unreported income in amounts which properly gave rise to the aforesaid tax deficiency assessments. Although the deficiency assessments were made against Vaughn C. Payne, individually, the evidence shows that Edith Pruitt Payne filed a joint return with Vaughn C. Payne for the year 1942.

9. The understatement of income earned by Vaughn C. Payne in the years 1943 through 1947, and earned by Vaughn C. Payne and Edith Pruitt Payne in 1942, was willfully made with the fraudulent intent to evade the taxes properly owing from them, and each of them.

10. Vaughn C. Payne and Edith Pruitt Payne own as tenants by the entireties certain real property in the City of St. Louis, Missouri, described with particularity in the complaint on file in this action, and identified here as the Maffitt Avenue vacant lots and 1918 Wagoner Place. These properties were acquired with funds earned by Dr. Payne, and Dr. Payne was made insolvent by the use of his funds to purchase the said real property for himself and his wife as tenants by the entireties.

[fol. 40] 11. With funds earned by Dr. Payne, Edith Pruitt Payne in October, 1947, purchased certain real property described with particularity in the complaint and known as 536 North Taylor Avenue, St. Louis, Missouri. Title to this property was taken at that time on behalf of Vaughn C. Payne and Edith Pruitt Payne in the name of the defendant Samuel E. Morganstern on whose behalf there was delivered to Mrs. Payne in October, 1947, a general warranty deed to Morganstern from the defendant Marjorie Mitchell Bell (then Marjorie Mitchell) and a general warranty deed from Morganstern in which the date and the name of the grantee were left blank. The use of his funds for the purchase of this property in the name of Samuel Z. Morganstern again left Vaughn C. Payne insolvent.

In 1950, after deficiency assessments were made against Vaughn C. Payne as herein described, the defendants Vaughn C. Payne and Edith Pruitt Payne, caused the name of Edith Pruitt Payne to be entered as grantee in the blank deed from Samuel Z. Morganstern, and the deed was then so recorded.

12. The transfer of the 536 North Taylor Avenue property to Edith Pruitt Payne was made with intent to defraud the creditors of Vaughn C. Payne.

13. The defendants Marjorie Mitchell Bell and Samuel Z. Morganstern were served with process in this action, but defaulted. The evidence shows that neither of them had at

any time or now has any right, title or interest in any of the real property described in paragraphs 10 and 11 of these findings, although a deed of trust against the 1918 Wagoner Place property in favor of Mrs. Bell, was recorded sometime ago. This deed of trust was given without any consideration, and was a so-called "straw mortgage."

14. The defendant J. F. Schrontz is the beneficiary of a deed of trust, which secures the payment of a loan by a lien on the property described as 536 North Taylor Avenue. This deed of trust was taken by the defendant Schrontz without knowledge that the conveyance of said property to Edith Pruitt Payne was fraudulent. The amount outstanding on this loan and secured by said deed of trust on February 3, 1955, was $12,381.92; and the actual holder of said deed of trust and beneficial owner thereof on that date was one Mary E. Leonidiff.

[fol. 41] 15. The contentions of the defendants Vaughn C. Payne and Edith Pruitt Payne about certain large cash gifts to each of them, which are said to account for the increase in their net worth shown on the net worth analysis, are expressly rejected and found unworthy of belief.

16. Charges of Vaughn C. Payne and Edith Pruitt Payne that the Commissioner of Internal Revenue and his agents acted outside the bounds of the pertinent laws and regulations are not sustained by any evidence whatever. The conduct of the Commissioner of Internal Revenue and his agents in this matter was in all respects proper and correct and according to law.

17. The defendant Vaughn C. Payne is indebted to the United States for income taxes, penalties and interest for the years 1944 and 1947 in the amount of $19,799.21.

18. The defendants Vaughn C. Payne and Edith Pruitt Payne are indebted to the United States for interest accrued on the deficiency assessments made against them for the year 1942 on the Commissioner of Internal Revenue's June 30, 1949, assessment list, from that date until paid, as provided by law.

19. The defendant Vaughn C. Payne is indebted to the United States for interest accrued on the deficiency assessments made against him for the years 1943 through 1947

on the Commissioner of Internal Revenue's June 30, 1949 assessment list from that date until paid as provided by law.

20. The understatement of income disclosed by the Commissioner's net worth analysis for the years 1943 through 1947, inclusive, disclosed unreported income all of which was fairly attributable to defendant Doctor Vaughn C. Payne.

21. Beginning in 1943, defendant Vaughn C. Payne from time to time transferred certain property and assets to his wife, Edith Pruitt Payne, or to himself and his wife as tenants by the entireties. Such transfers in each instance then made defendant Vaughn C. Payne insolvent, and with respect to each such transfer Vaughn C. Payne and Edith Pruitt Payne as tenants by the entireties are liable to the plaintiff for the transferred assets, etc.

[fol. 42] Conclusions of Law.

1. This Court has jurisdiction over each of the defendants individually, except for the defendant Marjorie Mitchell Bell. As to her, this Court has jurisdiction to determine her right, title, or interest in and to certain real property known as 1918 Wagoner Place and 536 North Taylor Street, St. Louis, Missouri.

2. Defendant Edith Pruitt Payne, who did not file or sign any income tax returns for the years 1943 through 1947, inclusive, is liable as a transferee but not individually with respect to the taxes assessed against Doctor Vaughn C. Payne for those years.

3. The defendant Vaughn C. Payne is indebted to the United States for income taxes, penalties and interest for the years 1944 and 1947 in the amount of $19,799.21.

4. The defendants Vaughn C. Payne and Edith Pruitt Payne are indebted to the United States for interest accrued on the deficiency assessments made against them for the year 1942 on the Commissioner of Internal Revenue's June 30, 1949 assessment list, from that date until paid as provided by law.

5. The defendant Vaughn C. Payne is indebted to the United States for interest accrued on the deficiency assess-

ments made against him for the years 1943 through 1947, inclusive, on the Commissioner of Internal Revenue's June 30, 1949 assessment list, from that date until paid, as provided by law.

6. Defendant Edith Pruitt Payne, and defendants Vaughn C. Payne and Edith Pruitt Payne, as tenants by the entireties, are liable to the plaintiff as transferees of the assets of Vaughn C. Payne to the extent stated in the findings of fact herein.

7. The United States of America has liens for the aforesaid taxes and interest on all property owned by Vaughn C. Payne and Edith Pruitt Payne, and each of them, to the extent that each of them is principally liable or liable as transferees, and specifically on the real property known as Maffitt Avenue lots, 1918 Wagoner Place, and 536 North Taylor Street, St. Louis, Missouri.

[fol. 43] 8. Defendants Samuel Z. Morganstern and Marjorie Mitchell Bell, and each of them, have no right or title to or interest in any of the aforesaid real property.

9. Defendant J. F. Schrontz is the beneficiary of a deed of trust, the actual beneficial owner of which is Mary E. Leonidiff, and which runs against the property known as 536 North Taylor Avenue, St. Louis, Missouri, securing an indebtedness of $12,381.92 owing to Mary H. Leonidiff from Edith Pruitt Payne. The aforesaid deed of trust of J. F. Schrontz to the property known as 536 North Taylor Avenue is prior in right to the aforesaid liens of the United States to that property.

10. No person other than the plaintiff and the defendants has any right, title or interest in the real property described in paragraphs 10 and 11 of the findings of fact herein.

11. The plaintiff is entitled to a reformation of the title of each of the real properties described in paragraphs 10 and 11 of the findings of fact herein, vesting such title in the defendant Vaughn C. Payne, with whose funds said properties were purchased. The defendants Vaughn C. Payne and Edith Pruitt Payne are each separately and jointly liable for the tax deficiencies, penalties and interest set out herein for the year 1942; and the defendant

Vaughn C. Payne is liable for the tax deficiencies, penalties and interest set out herein for the years 1943 through 1947, inclusive.

12. The plaintiff is entitled to foreclose its liens against the real properties known as 536 North Taylor Avenue, 1918 Wagoner Place and Maffitt Avenue lots, all in St. Louis, Missouri, as prior and superior in right to any other claim of right, title, or interest thereon, except only that defendant J. F. Schrontz has a prior and superior deed of trust upon the 536 North Taylor Avenue property to secure payment to him and to one Mary E. Leonidiff of the sum of $12,381.92 from the defendant Edith Pruitt Payne. (26 U. S. C. Section 3678.)

13. The plaintiff is entitled to a decree of foreclosure on account of its tax liens as aforesaid against the real properties referred to herein, pursuant to 28 U. S. C., Sections 2401 and 2002.

GEORGE H. MOORE,
Chief Judge.

[fol. 44] Judgment Order.

(Filed in U. S. District Court on March 22, 1956.)

United States District Court,
Eastern District of Missouri.

United States of America,
Plaintiff,

v.

Vaughn C. Payne, Edith Pruitt Payne, Marjorie Mitchell Bell, J. F. Schrontz, and Samuel Z. Morganstern,
Defendants.

Civil No. 9366 (1).

This action having come on for trial before the Court, and the evidence adduced by the parties appearing herein having been heard, and the Court having considered the motion for new trial filed herein by defendants Vaughn C. Payne and Edith Pruitt Payne and ruled thereon, and the

Court having made and filed its amended findings of fact and conclusions of law, it is now hereby

Ordered, Adjudged and Decreed that:

(1) The plaintiff have and recover from the defendant Vaughn C. Payne the sum of $19,799.21, with interest thereon at 6 per centum per annum from June 30, 1949 as provided by law, and the costs of this action incurred by it in that behalf.

(2) The plaintiff have and recover from the defendants Vaughn C. Payne and Edith Pruitt Payne, and each of them severally, interest as provided by law on the deficiency assessments made by the Commissioner of Internal Revenue against defendant Vaughn C. Payne on June 30, 1949 for the year 1942, at 6 per centum per annum from June 30, 1949 until paid.

(3) The defendant have and recover from the defendant Vaughn C. Payne and from the defendant Edith Pruitt Payne as transferee of Vaughn C. Payne, interest as provided by law on the deficiency assessments made by the Commissioner of Internal Revenue against him on June 30, 1949, for the years 1943 through 1947, all inclusive, at 6 per centum per annum from June 30, 1949 until paid.

(4) The plaintiff has valid and subsisting liens upon all property and rights to property of defendant Vaughn C. Payne for its taxes in the amounts set forth in paragraphs 1, 2 and 3 of this Order, from June 30, 1949, and is entitled to a foreclosure thereof upon the properties covered thereby.

[fol. 45] (5) The real property, which is hereinafter described as follows:

(a) Lot in Block 5638 of the City of St. Louis, formerly Block 4473 of the City of St. Louis, fronting 56 feet on the East line of Wagoner Place by a depth Eastwardly of 117 feet to an alley. Bounded South by property now or formerly of Woerheide Realty and Improvement Company, North by a line 28 feet South of the South line of North Market Street, or property now or formerly of John F. Cook. Record title in the names of Vaughn C. Payne and Edith Pruitt Payne, his wife, as tenants by the entirety.

(b) Lots Nos. 22-25 inclusive in Block No. 6 of the Taylor Subdivision in Survey 3300 and in Block No. 3713 of the City of St. Louis, together fronting 100 feet on the South line of Maffitt Avenue by a depth Southwardly of 145 feet to an alley. Record title in the names of Vaughn C. Payne and Edith Pruitt Payne, his wife, as tenants by the entirety.

(c) A parcel of ground in Block No. 4576 of the City of St. Louis, beginning at the intersection of the South line of Washington Boulevard and the East line of Taylor Avenue, thence Southwardly along the East line of Taylor Avenue 78 feet 9 inches, thence Eastwardly and parallel with the South line of Washington Boulevard 45 feet, thence Southwardly and parallel with the East line of Taylor Avenue 5 feet, thence Eastwardly and parallel with the South line of Washington Boulevard 30 feet, thence Southwardly parallel with the East line of Taylor Avenue 35 feet, thence Eastwardly and parallel with the South line of Washington Boulevard 25 feet, thence Northwardly and parallel with the East line of Taylor Avenue 118 feet 9 inches, thence Westwardly along the South line of Washington Boulevard 100 feet to the point to beginning.

Record title in the name of Edith Pruitt Payne, is to be sold free and clear of the liens of the United States and of any claim of right, title or interest therein of the defendants Vaughn C. Payne, Edith Pruitt Payne, J. F. Schrontz, Marjorie Mitchell Bell, and Samuel Z. Morganstern, in three individual and separate parcels as set out above in subheadings (a), (b) and (c), at a public sale [fol. 46] pursuant to 26 U. S. C., Sections 2001 and 2002. The sale shall be conducted by the United States Marshal of this District and shall take place at the Civil Court House of the City of St. Louis, Missouri, at 10:30 A. M. on the ..... day of ....., 1955. Notice of said sale shall be published once each week for a period of 4 weeks prior to said sale in the ....., a newspaper regularly issued and of general circulation published in the City of St. Louis, State of Missouri, in which City and State all said real property is situated. Said sale to be free and clear of all liens, the liens to attach to the proceeds as provided in this decree. All of

said property shall be sold for cash and to the highest bidder at said sale, ten per cent of the successful bid price to be paid immediately in cash or by certified check and the balance in 30 days from the date of sale either in cash or by certified check, except that, if the United States of America is the successful bidder, it shall not be required to make an immediate payment of any portion of the bid price, and it may make payment of Treasury check as provided by 31 U. S. C., Section 195.

(6) The defendants Marjorie Mitchell Bell and Samuel Z. Morganstern have no right, title, or interest in or to any of the aforesaid real property, and are not entitled to share in the proceeds of the sale thereof.

(7) The defendant J. F. Schrontz is the beneficiary of a valid and subsisting deed of trust from defendant Edith Pruitt Payne, covering the real property described in Paragraph 5 (c) of this Judgment Order, and securing an indebtedness of $12,381.92 which is now due and owing from defendant Edith Pruitt Payne to defendant J. F. Schrontz as title beneficiary and to one Mary E. Leonidiff as beneficial owner. The defendant J. F. Schrontz is entitled to a priority over all other claims against said real property.

(8) No person other than the plaintiff and the defendants Vaughn C. Payne, Edith Pruitt Payne, and J. F. Schrontz has any claim, right, title or interest in or to the real property described in Paragraph (5) of this Judgment Order.

(9) The plaintiff is entitled, should it find such reformation desirable or necessary, to obtain from the public authority duly constituted for that purpose a reformation of title to each of the properties listed under Paragraphs 5 (a), 5 (b) and 5 (c) of this Judgment Order, showing in [fol. 47] each case title to such property to be solely in Vaughn C. Payne from the date of present record title.

(10) The proceeds of the sale ordered in Paragraph (5) hereof shall be distributed as follows:

(a) As to the property described in Paragraph (5) (a) hereof:

(i) Costs of the sale and costs incurred by the Court in this action;

(ii) The balance remaining to be applied to the indebtedness of defendants Vaughn C. Payne and Edith Pruitt Payne to the United States under the judgment herein, and to its costs in this action;

(iii) Any balance remaining after satisfaction of said judgment, to defendants Vaughn C. Payne and Edith Pruitt Payne as joint tenants thereof.

(b) As to the property described in paragraph (5) (b) hereof:

(i) Costs of the sale and costs incurred by the Court in this action;

(ii) The balance remaining to be applied to the indebtedness of defendants Vaughn C. Payne and Edith Pruitt Payne to the United States under the judgment herein, and to its costs in this action;

(iii) Any balance remaining after satisfaction of said judgment, to defendants Vaughn C. Payne and Edith Pruitt Payne as joint tenants thereof.

(c) As to the property described in Paragraph (5) (c) hereof:

(i) Costs of the sale and costs incurred by the Court in this action;

(ii) $12,381.92 and accrued interest thereon to defendant J. F. Schrontz in full satisfaction of the debt from defendant Edith Pruitt Payne to him and to Mary E. Leonidiff, and to extinguish and vacate his lien on the said property;

[fol. 48] (iii) The balance remaining to be applied to the indebtedness of defendants Vaughn C. Payne and Edith Pruitt Payne to the United States under the judgment herein, and to its costs in this action;

(iv) Any balance remaining after satisfaction of said judgment, to defendant Edith Pruitt Payne.

And It Is So Ordered at St. Louis, Missouri, this the 22nd day of March, 1956.

GEORGE H. MOORE,
Chief Judge.

[fol. 49] Notice of Appeal.

(Filed in U. S. District Court on May 14, 1956.)

In the United States District Court,
Eastern District of Missouri.

United States of America,
Plaintiff,

vs.

Vaughn C. Payne, Edith Pruitt Payne, Marjorie Mitchell Bell, J. F. Schrontz and Samuel Z. Morganstern,
Defendants.

Civil No. 9366
Division No. 1

Notice is hereby given that Vaughn C. Payne and Edith Pruitt Payne, Defendants in the above entitled cause, hereby appeal to the United States Court of Appeals for the Eighth Judicial Circuit from the Court's judgment entered herein on the 22nd day of March, 1956.

CLAUDE I. BAKEWELL,
Attorney for Defendants,
Vaughn C. Payne and
Edith Pruitt Payne,
509 Olive Street,
St. Louis 1, Missouri.

[fol. 50] (Report of Sale of Real Estate by United States Marshal.)

(Filed in U. S. District Court on May 17, 1956.)

United States District Court,
Eastern District of Missouri,
Eastern Division.

United States of America,

Plaintiff,

v.

Vaughn C. Payne, Edith Pruitt Payne, Marjorie Mitchell Bell, J. F. Schrontz, and Samuel Z. Morganstern,

Defendants.

No. 9366 (1).

Comes now Omar L. Schnatmeier, United States Marshal for the Eastern District of Missouri, and makes this his report of sale of the real estate described in the judgment and order of the Court made and entered in this cause on the 22nd day of March, 1956.

That prior to said sale and pursuant to said judgment order a notice of sale, copy of which is hereto attached, was published in the St. Louis Daily Record, a newspaper of general circulation in the City of St. Louis, Missouri and regularly issued, for a period of four consecutive weeks on the same day of each week beginning on April 17, 1956.

That a sale of said real estate pursuant to said judgment was duly held at the east front door of the Civil Courts Building, Eleventh and Market Streets, St. Louis, Missouri, on the 15th day of May, 1956 commencing at the hour of 10:30 A. M., pursuant to said order and notice, and that at said sale George Voelker was the highest and best bidder for the real estate described in said judgment [fol. 51] order and notice of sale for the price and sum of $20,000.00; and that same was sold to him at said price. Further, that said purchaser has paid to me the sum of $2,000.00, representing 10% of the purchase price for same,

That the court costs in this action amount to the sum of $659.90.

That the Marshal's costs for the sale of said real estate, including cost of publication of notice of sale is $719.00.

OMAR L. SCHNATMEIER,
United States Marshal.

[fol. 52] (Order of District Court Approving Report of Sale of Property by United States Marshal.)

(Filed in U. S. District Court on May 17, 1956.)

On this 17th day of May, 1956, Omar L. Schnatmeier, United States Marshal for the Eastern District of Missouri, having filed his report of sale of the real estate described in the judgment and order of sale heretofore entered in this cause on March 22, 1956, which said sale was held on May 15, 1956 pursuant to said judgment and order and it appearing to the Court that said report of sale should be approved, it is therefore ordered,

1. Said report of sale is in all respects approved and confirmed.

2. Upon payment by the purchaser of the balance of the purchase price therefor the said United States Marshal for the Eastern District of Missouri shall execute his proper deed of conveyance to the purchaser, George Voelker.

3. That out of the proceeds of said sale said Marshal shall pay,

(a) Costs of sale and the court costs in this cause.

[fol. 53] (b) The balance of the debt owing by defendant Edith Pruitt Payne to J. F. Schrontz and or Mary E. Leonidiff and secured by a deed of trust on the property described in said judgment as

"Tract No. 3 A parcel of ground in Block No. 4578 of the City of St. Louis, beginning at the inter-

section of the South line of Washington Boulevard and the East line of Taylor Avenue, thence Southwardly along the East line of Taylor Avenue 78 feet 9 inches, thence Eastwardly and parallel with the South line of Washington Boulevard 45 feet, thence Southwardly and parallel with the East line of Taylor Avenue 5 feet, thence Eastwardly and parallel with the South line of Washington Boulevard 30 feet, thence Southwardly parallel with the East line of Taylor Avenue 35 feet, thence Eastwardly and parallel with the South line of Washington Boulevard 25 feet, thence Northwardly and parallel with the East line of Taylor Avenue 118 feet 9 inches, thence Westwardly along the South line of Washington Boulevard 100 feet to the point of beginning. Record title in the name of Edith Pruitt Payne."

in order to extinguish and vacate the lien of said deed of trust on said property, all pursuant to said judgment order.

(c) The balance remaining after the payment of costs and expenses of sale and the mortgage indebtedness above described and set out, to the United States of America, plaintiff herein, under the judgment in this cause.

(d) Any balance remaining after the payment of the items set forth in subparagraphs (a), (b), and (c), of paragraph 3 of this order to the defendants or either of them as provided in the judgment order in this cause.

GEORGE H. MOORE,
United States District Judge.

[fol. 54] (Order of District Court directing Clerk to pay to District Director of Internal Revenue at St. Louis out of Registry of Court certain sum of Money.)

(Filed in U. S. District Court on June 18, 1956.)

It being made to appear to the Court that there is in the Registry of the Court the sum of $18,908.89 represent-

ing the balance of the proceeds of the sale of real estate, after payment of costs and expenses of sale, pursuant to order and judgment heretofore entered in this cause and paid to the Clerk of this Court by the United States Marshal for the Eastern District of Missouri, now, therefore, it is

Ordered

That the Clerk of the Court, pursuant to Section 7403 of the Internal Revenue Code of 1954, pay to the District Director of Internal Revenue at St. Louis, Missouri, out of the Registry of the Court the balance of said $18,908.80 after deducting therefrom the sum of $659.90 for costs heretofore taxed against defendants Vaughn C. Payne and Edith Pruitt Payne.

GEO. H. MOORE,
United States District Judge.

[fol. 55] (Docket Entries in United States District Court.)

United States of America

vs.

Vaughn C. Payne, Edith Pruitt Payne, Marjorie Mitchell Bell, formerly J. F. Schrontz and Marjorie Mitchell, Samuel Z. Morganstern.

No. 9366 (1)

Clerk's Docket Entries.

1953

August 27—Complaint filed and summons issued thereon to defts. and copies of summons and complaint transmitted to U. S. Marshal for Southern District of Florida, for service upon deft. Marjorie M. Bell at Ft. Lauderdale, Fla.

September 10—Marshal's return filed. Summons executed at Ft. Lauderdale, Fla. for deft. on September 2, 1953.

September 21—Separate answers of defts. Vaughn C. Payne and Edith P. Payne to complaint filed.

September 28—Exhibits (3) volumes of defts. filed.

September 29—Notice to take depositions filed by pltff.

September 25—Marshal's return filed. Summons for Vaughn C. Payne and Edith Pruitt Payne and Samuel E. Morganstern executed August 31, 1953, for J. F. Schrontz, September 21, 1953.

November 19—Motion of deft. Vaughn C. Payne for more definite statement of complaint and for dismissal for misjoinder as to defts. Edith P. Payne et al. filed.

December 29—Order filed overruling motion of deft. Vaughn C. Payne for more definite statement and to dismiss for misjoinder of parties.

1954

January 21—Motion of defts. Vaughn C. and Edith Payne to dismiss complaint, with request for oral argument thereon, filed.

February 5—Joint motion of defts. Vaughn C. and Edith Payne to dismiss taken as submitted. Brief of pltff. in opposition to said motion presented.

March 18—Order filed overruling joint motion of defts. Vaughn C. Payne and Edith Payne to dismiss.

March 18—Set May 3, 1954.

March 27—Motion of defts. Vaughn C. and Edith Payne to dismiss, with endorsed request for oral argument thereon, together with law memo in support of said motion, filed.

April 2—On pltff's application, joint motion of defts. Vaughn C. Payne and Edith Payne to dismiss passed for hearing to April 23, 1954 and pltff. granted 20 days to file brief in opposition to said motion.

April 2—Pltff's request of defts. Vaughn C. and Edith P. Payne for admissions of facts filed

April 14—Deposition of Robert W. Brown taken on April 1, 1954 at Montgomery, Ala. before Ethel N. Schneider, a Notary Public, filed.

April 17—Answer of defts. Vaughn C. and Edith P. Payne to pltff's request for admissions filed.

[fol. 56] April 28—Pltff's motion to strike or dismiss counterclaim of defts. Vaughn C. and Edith P. Payne, filed.

April 30—Request of defts. Vaughn C. and Edith Payne for jury trial, and for permission to have reporter present for daily transcript on trial, filed. Supplemental memo of law in support of defts.' motion to dismiss, filed.

May 3—Defts' request for jury trial submitted and overruled. Pltff's motion to strike or dismiss counterclaim set for hearing May 4, 1954. Parties announcing ready cause passed for trial to March 4, 1954.

May 4—Hearing on motion pending and trial on the merits passed pending disposition of case on trial.

May 6—On the court's own motion, all pending motions, and trial on merits, passed to May 19, 1954.

May 17—Amended answer of defts. Vaughn C. and Edith P. Payne to request for admissions filed by leave.

May 19—By consent, hearing on all pending motions, as well as tried on the merits, continued to September Term, 1954.

June 10—Motion of deft. V. C. Payne to dismiss distraint, or for allowance of statutory exemption thereunder, together with request for oral argument on such motion, filed.

July 2—Motion of deft. Vaughn C. Payne to dismiss distraint, etc., submitted and pltff. granted 10 days to present brief and defts. 10 days thereafter for reply brief.

August 25—Carbon copies of claims (3) designated by deft. Payne as "Continuation of claim previously filed" received and filed.

September 16—Carbon copies of three separate sets of claims on Form 843 U. S. Treasury Department, Int. Rev., in the name of Edith Pruitt Payne, with accompanying statement that same are exact copies of claims [illegible] Claims Div., Gen'l Accounting Office, Washington, D. C. and are

a continuation of claims heretofore filed herein, filed by deft. Edith P. Payne.

September 23—Set Monday, January 17, 1955.

September 23—Motion of deft. Vaughn C. Payne to dismiss distraint denied.

December 1—One lot of copies of claims in name of Vaughn C. Payne on U. S. Treasury Department, Int. Rev. Service Form 843, filed by pltff. Vaughn C. Payne.

1955

January 10—Marshal's return filed. Subpoena to produce etc. executed for Harry Shapiro, Jr., The Pulitzer Publishing Co., New York Life Ins. Co., Mercantile Trust Co., Security National Bank, New England Mutual Life Ins. Co., Missouri Insurance Company, Lafayette Federal Savings & Loan Assn and Harry Alter on 1 4 55. Subpoena for witness executed for Mrs. Melanie C. Pruitt and subpoena to produce document etc. executed for American National Ins. Co., Atlanta Life Ins. Co., Edith Pruitt Payne, Mercantile Commerce Natl. Bank, Metropolitan Life Ins. Co., Mr. Vaughn C. Payne, W. C. Scott Co., on 1 10 55.

January 17—Depositions of defts. Vaughn C. Payne and Edith Payne taken on behalf of pltff. filed. Deft's motions to dismiss argued, submitted and overruled. Pltff's motion to strike defts' counterclaim argued, submitted and sustained and counterclaim stricken. Parties announcing ready for trial, final hearing of cause before the Court commenced, but not concluded and further proceedings thereon postponed until tomorrow at ten a. m.

[fol. 57] January 18—Again come parties, whereupon final hearing of cause before the Court is resumed but not concluded, and further proceedings thereon postponed until tomorrow at ten a. m.

January 19—Again come parties; whereupon final hearing of cause before the Court is resumed but not concluded and further proceedings postponed until tomorrow at 10:00 A. M.

January 20—Again come parties pltff. and defts. Vaughn C. & Edith P. Payne; whereupon final hearing of cause

before Court resumed ad concluded. Default noted as to defts. Marjorie Mitchell Bell and Samuel Z. Morganstern. Motion of defts. Vaughn C. & Edith P. Payne for judgment in their favor at close of evidence filed, submitted and judgment announced by Court for pltff. and against defts. M. M. Bell, Morganstern and Vaughn C. & Edith P. Payne as prayed, pltff. to prepare findings of fact, conclusions of law and judgment accordingly. Cause taken as submitted as to deft. J. F. Schrontz and said deft. granted 20 days in which to prove his claim of priority by way of affidavit, and to be awarded priority upon making of such proof. Costs of title certificate introduced in evidence awarded pltff.

January 29 Motion of defts. Vaughn C. and Edith P. Payne for judgment in accordance with their motion for directed verdict, or in the alternative for new trial, with attached supporting memorandum of suggestions, filed.

February 1 Motion of deft. Vaughn C. Payne, et al. for judgment non obstante veredicto, or for a new trial, set for hearing on March, 1955, motion docket.

February 8 Affidavit of J. F. Schrontz concerning priority of mortgage lien in certain land, filed.

March 2 By consent, defts' motion for judgment in accordance with motion for directed verdict, removed from March, 1955, motion docket and set for hearing on April, 1955 motion docket.

March 29 Findings of fact & conclusions of law of the Court filed and final judgment and order in accordance therewith filed and entered decreeing in paragraph one of such judgment that pltff. have and recover from defts. Vaughn C. Payne and Edith P. Payne, and each of them severally, the sum of $19,799.21 with interest thereon at 6% per annum from June 30, 1949, and costs; decreeing in paragraph two of such judgment that pltff. have and recover from defts. Vaughn C. Payne and Edith P. Payne, and each of them severally, interest as provided by law on the deficiency assessment made by the Commissioner of Int. Rev. against deft. Vaughn C. Payne on June 30, 1949 for the years 1942, 1945 & 1946, at 6% per annum from June 30, 1949 until paid; decreeing under paragraph 3 of

such judgment that pltff. have and recover from defts. Vaughn C. Payne and Edith P. Payne as transferee of Vaughn C. Payne, interest on deficiency assessment made by Commissioner of Int. Rev. against Vaughn C. Payne on June 30, 1949 for the year 1943, at 6% per annum from June 30, 1949, until paid; decreeing under paragraph 4 that pltff. has valid and subsisting lien upon all property and rights to property of deft. Vaughn C. Payne for its taxes in the amounts set forth in paragraphs 1, 2 & 3 of this order, from June 30, 1949, and entitled to a foreclosure thereof upon the property covered thereby; decreeing in paragraph 5 of such judgment that real property therein described be sold at public sale to be conducted by the U. S. Marshal of this court and take place at Civil Court House of City of St. Louis at 10:30 A. M. on May 6, 1955; notice of such sale to be published in St. Louis Daily Record, etc.; decreeing in paragraph of judgment that defts. Marjorie Mitchell Bell and Samuel Z. Morganstern have no right, title or interest in or to any of aforesaid real estate and not entitled to share in the proceeds of the sale thereof; decreeing deft. J. F. Schrontz the beneficiary of a valid and subsisting deed of trust from deft. Edith Payne covering real estate described in paragraph 5 (a) of this order, and securing an indebtedness of $12,381.97 now due and owing from deft. Edith Payne to deft. J. F. Schrontz as title beneficiary and to one Mary E. Liddiff as beneficial owner, and that deft. J. F. Schrontz is entitled to a priority over all other claims against said real property; decreeing under paragraph 8 of such judgment that pltff. and defts. Vaughn C. Payne, Edith P. Payne and J. F. Schrontz, and no other person, has any claim, right, title or interest in or to real estate described in paragraph 5 of this judgment and decreeing in paragraph 9 of such judgment the distribution of the proceeds from the sale of real property described in paragraph 5 (a), 6 (b) and 6 (c) of this judgment.

(Col. 5s) April 1 By consent and with leave, defts' motion for judgment in accordance with their motion for directed verdict, or in the alternative for a new trial, refiled and passed for hearing to May, 1955 motion docket. Movants' suggestions in support of aforesaid motion filed.

April 1—Pltff's verified bill of costs, filed.

April 11—Pltff's suggestions in opposition to motion for new trial of defts. Payne filed.

April 21—Motion of defts. to stay execution on sale of certain property, etc. with request for oral argument endorsed thereon, filed.

April 26—Motion heretofore filed of defts. for stay of execution of sale pending determination of defts' motion for new trial, submitted.

April 26—Order on motion of defts. Vaughn C. and Edith P. Payne filed staying execution of judgment herein pending disposition of motion for new trial filed by said defts., such stay being conditioned upon payment by said defts. to U. S. Marshal of this court the costs of publication of the advertisement of sale of defts' property made pursuant to said judgment.

June 2—Defts' supplemental suggestions to motion for a new trial, and reconsideration, filed. Motion of pltff to correct judgment entered herein March 29, 1955 as to legal description of real estate in paragraph (5) (c) of said judgment filed by U. S. Atty., presented and order thereon amending said judgment accordingly filed and entered.

June 3—Entry of appearance of Claude I. Bakewell as associate counsel for defts. Vaughn C. and Edith Payne, filed. Defts' motion for judgment in accordance with their motion for directed verdict, or in the alternative, for a new trial, passed for hearing to June 6, 1955, at 10:30 a. m.

June 6—Defts' motion for judgment in accordance with their motion for directed verdict, or in the alternative, for a new trial, argued and submitted on briefs heretofore filed and to be hereafter presented; defts' supplemental brief forthwith presented, pltff. granted 20 days to submit brief and defts 10 days thereafter within which to submit reply brief.

August 15—Separate affidavits of Vaughn C. Payne and Edith Pruitt Payne received and filed.

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January 31 Document designated as "continuation of claims," filed by deft. Vaughn C. Payne.

February 27 Marshal's returns filed. Order executed. Judgment order partially executed.

March 22 Findings of fact and conclusions of law filed and order and judgment filed and entered decreeing that pltff. have judgment against deft. Vaughn C. Payne for $19,799.21, with interest from June 30, 1949, and for costs; that pltff have judgment against Vaughn C. Payne and Edith Pruitt Payne severally for interest on deficiency assessment made by Commissioner of Internal Revenue against Vaughn C. Payne for 1942 at Six percent from June 30, 1949; that pltff. have judgment against Edith Pruitt Payne for interest at six per cent per annum on deficiency assessment made by Commissioner of Internal Revenue against Vaughn C. Payne for years 1943 through 1947 from June 30, 1949 and that pltff. have lien upon property of deft. Vaughn C. Payne described and that same be sold, etc.

Vol. 504 May 14 Notice of appeal of defts. Vaughn C. Payne and Edith Pruitt Payne to U. S. Court of Appeals, 8th Circuit, from judgment entered herein March 22nd, 1956, together with said defts' cost bond on said appeal in the penal sum of $250.00 filed and copy of said notice of appeal forthwith mailed by Clerk of Court to U. S. At

May 17 Report of U. S. Marshal of this Court of sale of Real Estate described in judgment and order made and entered herein March 22, 1956 filed, presented and order thereon filed and entered approving and confirming said report of sale, and upon payment of purchaser of balance of purchase price to said Marshal, such Marshal shall execute his proper deed of conveyance to purchaser, and providing for manner of distribution of proceeds of such sale, etc.

June 4 Marshal's return filed as to execution of judgment order filed and entered March 22, 1956, by publication and public sale to highest bidder for cash of real es-

tate described in said judgment order and Notice of Sale, as to disbursements made from proceeds of such sale, including Marshal's commission and expenses on such sale, and of tender of balance remaining from sale price to Clerk of the Court. Said Marshal, pursuant to aforesaid return, tenders into Court as balance remaining from sale price from aforesaid real estate sum of $18,908.89, which sum is deposited by Clerk in Registry.

June 12—Transcript of proceedings had and testimony adduced at hearing of cause before the Court on January 17, 1955, filed by Official Court Reporter of Court No. One.

June 18—Order filed authorizing and directing Clerk, pursuant to Sec. 7406 of Int. Rev. Code of 1954, to pay to Dist. Director of Int. Rev. at St. Louis, out of Court Registry the balance of the sum of $18,908.89 paid into Registry by U. S. Marshal as balance of proceeds of sale of real estate, after deducting from such balance the sum of $659.90 for costs taxed against defts. Vaughn C. & Edith P. Payne.

June 20—On oral application defts-appellants Vaughn C. Payne and Edith P. Payne granted extension of time to and including August 10, 1956, to file designation of portions of record and points to be relied upon on appeal, and to lodge and file record on appeal in U. S. Court of Appeals, 8th Circuit.

A True Copy: Certified this 18 day of July, 1956.

JAMES J. O'CONNOR, Clerk,
By JOHN J. JARVIS,
(Seal) Deputy Clerk.

[fol. 60] (Supplemental Docket Entries in United States District Court.)

United States of America

vs.

Vaughn C. Payne, et al.

No. 9366(1)

Clerk's Docket Entries.

Supplemental to docket entries transmitted with original notice of appeal on July 18, 1956.

1956

July 6 On praecipe filed by U. S. Atty., execution issued on judgment against defts. Vaughn C. & Edith P. Payne entered herein March 29, 1955, returnable to March Term, 1957.

July 13 Entry of appearance of Gillette F. Wright as co counsel for defts. Vaughn C. & Edith P. Payne, filed.

Designation of defts-appellants, Vaughn C. & Edith P. Payne of contents of record on their appeal herein, as well as said defts' points to be relied upon on such appeal, filed.

July 18 Original notice of appeal and two certified copies of Clerk's docket entries transmitted to Clerk, U. S. Court of Appeals, 8th Circuit.

July 13 Stipulation of parties filed that plff-respondent's designation of additional portions of records, etc., to be included in record on appeal may be served and filed on or before August 2, 1956.

July 31 Appellee's designation of portions of record on appeal, filed.

A True Copy Attest: Certified this 30th day of November, 1956.

GEORGE J. BRENNAN, Clerk.

By JOHN J. JARVIS, Deputy Clerk.

(Seal)

[fol. 61] (Stipulation with respect to incorporation of Exhibits in Printed Record.)

(Filed in the United States Court of Appeals for the Eighth Circuit on November 16, 1956.)

In the United States Court of Appeals
for the
Eighth Circuit
United States of America

Vaughn C. Payne and
Edith Pruitt Payne,
Defendants-Appellants,
vs. No. 15,620.

United States of America,
Plaintiff-Appellee.

Come now the Appellants and the Appellee by their respective counsel and hereby stipulate and agree that the exhibits introduced in evidence are as described herein and contain the facts, as outlined herein, and may be referred to in the printed record as stipulated herewith, with the same effect as though set out in full in the printed record:

1. Plaintiff's Exhibit No. 1 is a Certificate of Assessments (Internal Revenue Form No. 899) dated January 14, 1955 directed to the Commissioner of Internal Revenue against Dr. Vaughn C. Payne individually for the years 1942 through 1947. The first notice of assessment is dated June 17, 1949; the lien date is August 12, 1949.

2. Plaintiff's Exhibit No. 2 is a 1942 Federal Income Tax return of Vaughn Colfax Payne, bearing the signature of Vaughn C. Payne and Edith E. Payne (a photostat of the first page of this return to be included in the printed record).

3. Plaintiff's Exhibit No. 3 is a Notice of Tax Lien dated August 12, 1949 for the years 1942 through 1947

(Treasury Form No. 668). The notice of tax lien names Dr. Vaughn C. Payne only.

[fol. 62] 4. Plaintiff's Exhibit No. 9, dated February 18, 1949, is a "90 day letter" directed to Dr. Vaughn C. Payne solely (Form No. 1279). It asserts deficiencies for the years 1942 through 1947.

5. Plaintiff's Exhibit No. 39 is a certificate of title dated April 29, 1954 showing title to the Maffitt Avenue property to be vested on said date in Vaughn C. Payne and Edith M. Payne, his wife, as tenants by the entirety. This certificate shows that a notice by the Director of Internal Revenue of tax lien No. 7732 against Dr. Vaughn C. Payne for $31,147.00 plus interest, was filed with the Recorder of Deeds on August 12, 1949. It further shows that no such lien was filed against Edith Payne. It further shows that notice of this litigation was filed with the Recorder on April 29, 1954.

6. Plaintiff's Exhibit No. 40 is a certificate of title dated April 29, 1954 showing title to the Taylor Avenue property to be vested on said date in Edith Pruitt Payne, subject to a deed of trust executed by Edith Pruitt Payne and her husband. It shows that notice by the Director of Internal Revenue of tax lien No. 7732 against Dr. Vaughn C. Payne for $31,147.00 was filed with the Recorder of Deeds August 12, 1949. It shows no such lien filed against Edith Pruitt Payne. It shows that notice of this litigation was filed with the Recorder April 29, 1954.

7. Plaintiff's Exhibit No. 41 is a certificate of title dated April 29, 1954 showing title to the Wagoner Place property to be vested on said date in Vaughn C. Payne and Edith E. Payne, his wife, as tenants by the entirety, subject to deed of trust executed by said owners. It further shows that notice by the Director of Internal Revenue [fol. 63] of tax lien No. 7732 against Vaughn C. Payne for $31,147.00 plus interest was filed with the Recorder of Deeds August 12 1949. It shows no such lien filed against Edith Payne. It shows that notice of this litigation was filed with the Recorder April 29, 1954.

8. Plaintiff's Exhibit No. 10 is a general warranty deed dated October 3, 1947 covering Taylor Avenue property from Margorie Mitchell to Samuel Z. Morganstern.

9. Plaintiff's Exhibit No. 11 is a general warranty deed dated October 3, 1950 covering Taylor Avenue property from Morganstern to Edith Pruitt Payne.

10. Plaintiff's Exhibit No. 12 is a general warranty deed dated February 1, 1944 covering Wagoner Place property from Jeanette Kelly to Vaughn C. Payne and Edith E. Payne as tenants by the entirety.

11. Plaintiff's Exhibit No. 13 is a general warranty deed dated October 10, 1945 covering Maffitt Avenue property from Jeanette Kelly to Vaughn C. Payne and Edith M. Payne, his wife, as tenants by the entirety.

Respectfully submitted,

CLAUDE I. BAKEWELL,
GILLETTE F. WRIGHT,
Counsel for Appellants,
1105 LaSalle Building,
St. Louis 1, Missouri,
CHestnut 1-4330.

W. FRANCIS MURRELL,
Asst. U. S. Attorney,
Counsel for Appellee.

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JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

SEPTEMBER TERM, 1957.

No. 648

VAUGHN C. PAYNE and EDITH PRUITT PAYNE,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

CLAUDE I. BAKEWELL,
GILLETTE F. WRIGHT,
1105 LaSalle Building,
509 Olive Street,
St. Louis 1, Missouri,
CHestnut 1-4340,
Attorneys for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES.

SEPTEMBER TERM, 1957.

No. .....

VAUGHN C. PAYNE and EDITH PRUITT PAYNE,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

Petitioners respectfully pray that a Writ of Certiorari shall issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in the above entitled case, being Cause No. 15620 in said Court. A copy of the opinion is appended to this Petition.

JURISDICTION.

Judgment of the Circuit Court of Appeals for the Eighth Circuit was rendered on August 8, 1957, and entered on August 8, 1957. Petition for rehearing was denied on September 17, 1957.

Jurisdiction of this Court is invoked under Title 28, U. S. C. A., 1254, and under Rule 19, 1 (b) of the Supreme Court Rules.

THE QUESTIONS PRESENTED ARE:

1. Whether a spouse can be held liable for the income tax deficiencies of her husband if joint returns have not been filed.

2. Whether real estate held by the entirety is subject to a lien for the taxes of one spouse.

3. Whether real estate which vested by the entirety in 1944 and 1945, respectively, is subject to a lien against one spouse which arose in 1949.

4. Whether real estate held by the entirety can be sold to satisfy the tax delinquency of one spouse.

5. Whether a lien can attach to the sole property of one spouse for the delinquent taxes against her husband.

6. Whether a lien can attach to the individually held property of a spouse for the delinquent taxes of her husband when no notice was given her, no demand was made and no assessment was asserted against her.

7. Whether the individually held property of the spouse can be sold to satisfy the delinquent taxes of her husband.

8. Whether property of one spouse can be levied upon as a transferee to satisfy the tax delinquencies of her husband when no assessment was made against her.

9. Whether in a suit based upon the assessment and lien theory a transferee can be held liable for the delinquent taxes of the transferor when there has been no assessment against the transferee.

10. Whether fraud penalties can be imposed when fraud has not been pleaded.

11. Whether a lien covering fraud penalties can be imposed upon property of a transferee which vested in 1944, 1945 and 1947, respectively, for an assessment made against the transferor in 1949.

STATUTES AND RULES WHICH THIS CASE INVOLVES.

26 U. S. C. A. 51 (b) (1) (I. R. C. 1939):

"* * * If a joint return is made * * * the liability with respect to the tax shall be joint and several."

26 U. S. C. A. (I. R. C., 1939), 3671:

"Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time" (53 Stat. 449).

26 U. S. C. A. (I. R. C., 1939), 3670:

"If any person liable to pay any tax neglects or refuses to pay the same **after demand**, the amount * * * shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person" (53 Stat. 448). (Emphasis ours.)

Rule 9 (b), Rules of Civil Procedure, 28 U. S. C. A., page 316:

"In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

STATEMENT OF THE CASE.

This was an action against Vaughn Payne for the collection of taxes, and for the enforcement of a lien upon his property for the payment of such taxes (Record, pages 1 and 3 which states that the action is brought pursuant to 28 U. S. C., Sec. 1396 and 26 U. S. C., Section 3678).

The notice of assessment was given July 1, 1949; the assessment list was received by the Collector of Internal Revenue on July 11, 1949 (Record, page 34).

The lien date is August 12, 1949. The certificate of assessment and the notice of tax lien named Vaughn Payne individually (Record, pages 58 and 59).

Edith Payne, wife of taxpayer, was not a taxpayer. She was made a defendant as an alleged transferee of his property (Record, page 3); and it was claimed that the plaintiff acquired liens on property transferred to her (Record, page 3).

No notice, demand or assessment was ever made against Edith Payne (Record, pages 25, 28); and no tax lien was ever directed to her (Record, page 59).

Judgment was rendered against Vaughn Payne for $19,799.21 for delinquent taxes, fraud penalties, interest and costs; and it was ordered and decreed that two parcels of real property held by defendants as tenants by the entirety and one parcel held solely by Edith Payne, be sold to satisfy the liens which the plaintiff had against Vaughn Payne individually. It was further ordered and adjudged that the plaintiff was entitled to a reformation of title with respect to the real estate held by the entirety, and the one parcel held by Edith Payne alone so that title should be considered to have been solely the property of Vaughn Payne for the purpose of enforcing the tax lien against him (Record, pages 40-42).

The two pieces of real estate held by the entirety vested in Vaughn and Edith Payne, respectively, in 1944 and 1945 (Record, page 60); and the one parcel vested in Edith Payne individually in 1947 (Record, page 27).

The tax lien dated August 12, 1949, named Vaughn Payne only (Record, pages 58-59) and the lien did not appear on the assessment list until 1949 (Record, page 25). Despite this, however, the Court ordered the sale of all of said real estate to cover the tax delinquencies of Vaughn Payne individually.

REASONS FOR ALLOWANCE OF WRIT.

1. The opinion below should be reviewed because it erroneously adjudges and holds that real estate held by the entirety is subject to a lien for the taxes of one spouse. It sanctioned the sale of two parcels of real estate held by the entirety since 1944 and 1945, respectively, for a lien which was asserted against the husband alone in 1949. This is in direct conflict with **U. S. v. Hutcherson**, 188 Fed. (2d) 326; **Raffaele v. Granger, C. I. R.**, 196 Fed. (2d) 620, and **U. S. v. Nathanson**, 60 Fed. Supp. 193, all of which hold that real estate held by the entirety is not subject to a lien for the taxes of one spouse.

2. The opinion below erroneously adjudges that the individually held property of Mrs. Payne is liable for the delinquent taxes of her husband. It held that real estate which vested in Mrs. Payne alone in 1947 is subject to a lien against her husband which did not arise until 1949. This is directly contrary to **Harris v. Commissioner**, 174 Fed. (2d), page 70 (note on page 71), which holds that one spouse is not liable for the taxes of the other when joint returns have not been filed. Section 51 (b) (1), Title 26, U. S. C. A. (I. R. C., 1939), provides for joint liability of husband and wife only when joint returns have been filed.

3. The opinion erroneously sustains liens which arose in 1949 against two parcels of real estate which had vested by the entirety in 1944 and 1945, and against one parcel which vested in Mrs. Payne alone in 1947. This is in direct conflict with 26 U. S. C. A. (I. R. C., 1939) 3671, which provides that a lien arises at the time the assessment list is received by the Collector of Internal Revenue. This principle has been enunciated in **United States v. Reese**, 131 Fed. (2d) 466, and in **Citizens State Bank o. Barstow v. Vedal**, 114 Fed. (2d) 380.

4. The opinion erroneously sustains a lien against Mrs. Payne's property even though she received no notice, demand or assessment. This is directly contrary to the holding of the Supreme Court of the United States in the case of **Detroit Bank v. U. S.**, 317 U. S. 329, 335, which holds that "there is no lien and no notice can be recorded until there has been a demand by the collector and a refusal to pay it by the taxpayer."

It is also directly in conflict with 26 U. S. C. A. (I. R. C., 1939) 3670, which provides that there must first be a demand against a taxpayer before a lien arises.

5. Judgment cannot be sustained against Mrs. Payne as a transferee because no assessment was made against her. The case of **U. S. v. Updike**, 32 Fed. (2d), page 1, unequivocally holds that in a **suit predicated upon an assessment** against the transferor, there must be an assessment against the transferee.

6. Judgment for fraud penalties cannot be sustained because fraud was not pleaded. **Kithcart v. Metropolitan Life Insurance Co.**, 88 Fed. (2d) 407; Rule 9 (b) Rules of Civil Procedure.

7. Judgment cannot be collected from proceeds of a foreclosure sale of a transferee's property which vested

several years prior to the assessment against the transferor.

The opinion rendered by the Circuit Court of Appeals adjudged that Mrs. Payne was not a taxpayer (Opinion, page 6). Despite this, however, the opinion sanctioned the sale of two parcels of real estate held by the entirety and one parcel owned solely by Mrs. Payne to satisfy the tax delinquency of Dr. Payne which was asserted several years after the titles had vested. The tax delinquency against Vaughn Payne was not asserted until 1949 (Record, pages 58-59); and yet the Court ordered the sale of real estate held by the entirety since 1944 and 1945, respectively, to satisfy said delinquency. It also ordered the sale of one parcel of real estate held individually by Mrs. Payne since 1947 to satisfy the tax delinquency against her husband which arose in 1949.

The law is clear that:

A. Edith Payne is not liable for the tax deficiencies of her husband.

Harris v. Commissioner, 174 Fed. (2d), page 70 (note on page 71);
26 U. S. C. A. 51 (b) (1) (I. R. C. 1939).

B. Real estate held by the entirety cannot be sold to satisfy the tax delinquency of one spouse.

U. S. v. Hutcherson, 188 Fed. (2d) 326;
Raffaele v. Granger, C. I. R., 196 Fed. (2d) 620;
U. S. v. Nathanson, 60 Fed. Supp. 193.

(This is particularly true when the lien did not arise until several years after the real estate had vested by the entirety. Section 3671 of 26 U. S. C. A. (I. R. C. 1939) provides:

"Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was re-

ceived by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time" (53 Stat. 449).

The lien in this case (against Vaughn Payne only) arose in 1949 (Record, pages 58 and 59), whereas the two parcels of real estate vested by the entirety, respectively, in 1944 and 1945 (Record, page 60).

A third parcel of real estate vested in Edith Payne alone in 1947 (Record, page 27). Yet all of this real estate was sold under a lien against Vaughn Payne which arose in 1949. Petitioners respectfully urge that no lien could attach to Edith Payne's property because no notice, demand or assessment was made against her. She was not a taxpayer. Under no circumstances should her property which vested in her in 1947 have been sold to satisfy a tax lien against her husband which did not arise until 1949—when the assessment list was received by the Collector.

Detroit Bank v. U. S., 317 U. S. 329, 335;
In re Holdsworth, 113 Fed. Supp. 878;
26 U. S. C. A. 3670 (I. R. C. 1939), 53 Stat. 448;
Harris v. Commissioner, 174 Fed. (2d) 70 (note on page 71).

The Circuit Court of Appeals sanctioned the sale of the real estate by holding:

"It is true that the decree included a declaration that the government had a lien upon the property involved against the wife as transferee. The property was not sold, however, upon the basis of a foreclosure of such a purported lien, but upon 'a reformation of the title' as to each of the three pieces of property, so as to vest all of them in Payne personally, and a foreclosing of the lien which thereupon would become perfected and legally existing against the properties by virtue of the filing of the assessment list **as to him in 1949.**" (Opinion, page 7.) (Emphasis ours.)

Petitioners respectfully assert that this was not an equitable action for the reformation of title to real estate. It was a suit against Vaughn Payne for the collection of taxes and for the enforcement of a lien. The complaint so described it (Record, page 1):

> "This action is brought pursuant to 28 U. S. C., Section 1396."

and, Record, page 3:

> "This action is also based on 26 U. S. C., Section 3678" (I. R. C. 1939).

This particular provision of the statutes is entitled, "Civil action to enforce lien on property."

This was a suit against Vaughn Payne based upon a deficiency assessment and for a foreclosure of liens upon real estate.

The District Court made a finding of fact and entered a conclusion of law that:

> "The defendants Vaughn C. Payne and Edith Pruitt Payne are indebted to the United States for interest accrued on the deficiency assessments made against them. * * * " (Record, pages 36 and 37).

The District Court also concluded that:

> "The United States of America has liens for the aforesaid taxes and interest on all property owned by Vaughn C. Payne and Edith Payne and each of them * * * " (Record, page 38):

and it ordered sale of all the real estate to foreclose the liens (Record, pages 39-41).

The complaint was not based on the trust fund theory; and at no time during the trial of the case in the District

Court was this theory presented, considered, argued or briefed.

It is true that in the prayer for relief (of the complaint) the plaintiff asked for a reformation of title with respect to the parcels of real estate held by the entirety. (Record, page 4), but the allegations of the complaint itself clearly demonstrate that the action was predicated on the lien theory. (It is interesting to observe that the prayer for relief did not ask for reformation of title to the one parcel held by Edith Payne alone. It did not even mention this parcel; and yet the Circuit Court of Appeals in its opinion included this parcel as one of the three which were sold upon a reformation of title.)

The language of the opinion admits that the procedure was a foreclosing of the lien which thereupon would become perfected and legally existing against the properties by virtue of the filing of the assessment list as to him in 1949 (Opinion, page 7).

Petitioners respectfully urge that this was either a suit based upon the assessment and lien theory—or a suit (against a transferee) under the "trust fund theory." It cannot be both. Since an assessment was made against Dr. Payne, and since it is a suit to reduce his delinquent taxes to judgment, the holding in **U. S. v. Updike**, 32 Fed. (2d), page 1, tells us that this is and must be a suit based on assessment and therefore not under the "trust fund theory."

Under such circumstances Edith Payne's property (held by the entirety or individually) could not be liable for her husband's taxes because no notice, demand or assessment was made against her. The Updike case holds clearly that if an assessment is made against the taxpayer, an assessment must likewise be made against the transferee. Had an assessment not been made against Dr. Payne, perhaps

a suit could have been sustained against Mrs. Payne, as a transferee under the trust fund theory. In the words of the Updike opinion, 52 Fed. (2d), pages 4, 4:

> "It is probably true that the government could now maintain this suit, if the assessment had not been made in 1920; and probably true that, if the assessment had never been made it could now be made. But it still remains true that this is not a suit 'without assessment,' and is therefore not within the savings clause."

The judgment included 50% penalties for fraud, although fraud was not pleaded. The opinion (page 10) refers to "the false or fraudulent returns filed by Payne * * *"; and yet the complaint did not allege that the returns were false or fraudulent. The law is undisputed that allegations of fraud must be pleaded with particularity, and proved

Kitheart v. Metropolitan Life Insurance Co., 88 Fed. (2d) 407;

Rule 9 (b), Rules of Civil Procedure.

The only purported fraud complained of was a transfer of assets from Vaughn Payne to his wife and himself. However, any such transfers must necessarily have been made in 1944 and 1945 when the property vested in them as tenants by the entirety (Record, page 60). But the assessment against Vaughn Payne was not made until 1949. A transferee cannot be held liable for fraud penalties where the transfer is before assessment. Mertens, Vol. 9, Sec. 53.08, page 496 (citing ruling No. 1029 General Counsel, Bureau of Internal Revenue, CB VI-I, page 117).

Likewise, even if there had been a transfer of the one parcel of real estate to Mrs. Payne which vested in 1947, it could not be sold for a lien covering fraud penalties imposed upon an assessment made against Vaughn Payne in 1949.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

CLAUDE I. BAKEWELL,
GILLETTE F. WRIGHT,
1105 LaSalle Building,
509 Olive Street,
St. Louis 1, Missouri,
CHestnut 1-4340,
Attorneys for Petitioners.

APPENDIX.

Opinion.

UNITED STATES COURT OF APPEALS
For the Eighth Circuit.

No. 15,620.

Vaughn C. Payne and Edith Pruitt Payne, Appellants, vs. United States of America, Appellee.	Appeal from the United States District Court for the Eastern District of Missouri.

[August 8, 1957.]

Claude I. Bakewell (Gillette F. Wright with him on the brief) for Appellants.

Davis W. Morton, Jr., Attorney, Department of Justice (Charles K. Rice, Assistant Attorney General, A. F. Prescott, Attorney, Department of Justice, and Harry Richards, United States Attorney with him on the brief) for Appellee.

Before Gardner, Chief Judge, Johnsen, Circuit Judge, and Donovan, District Judge.

Johnsen, Circuit Judge.

In 1949, the Commissioner of Internal Revenue made assessment against Vaughn C. Payne, of tax deficiencies

and fraud penalties, for each of the years 1942 to 1947, inclusive.

Notice of the determinations, which had been previously made, and demand for payment were properly served on Payne. And the assessment list was duly transmitted to and received by the Collector, with notice of lien being filed by him with the Recorder of Deeds for the City of St. Louis, Missouri.

Thereafter, from 1950 to 1953, Payne made payment of the deficiencies and penalties for the years 1942, 1945 and 1946, except interest thereon from the date of assessment to the time of payment.

On August 27, 1953, at the request of the Commissioner and on the direction of the Attorney General, this action was instituted in the District Court, against Payne and his wife,[1] (1) to have the remaining amount of the deficiencies, penalties and interest reduced to judgment against Payne; (2) to have it decreed that two described pieces of real estate, acquired in 1944 and 1945, with title taken and standing in the name of Payne and his wife as tenants by the entirety, had been purchased with funds of Payne, had left Payne without sufficient other assets to pay his outstanding tax liabilities, and had had for their transaction purpose the defrauding of Payne's creditors, including the United States; (3) to have it decreed that a third piece of real estate, acquired in 1947, with title taken and standing in the wife's name, had been purchased with funds of Payne, constituted a conveyance and transfer to her without consideration, and had left Payne without sufficient assets to pay his outstanding tax liabilities; and (4) to have enforced, under 26 U. S. C. A., Int. Rev. Code of 1939, § 3678, the lien, which existed from the Collector's

[1] Some other parties were also named as defendants, but they are not involved on this appeal.

receiving of the assessment list, as well as such other rights as the United States had in the circumstances to have the real estate subjected to the payment of the tax liability involved.

Between the institution of the suit and the time of the trial, Payne made payment of the deficiencies and penalties assessed for the year 1943 and a part of those assessed for the year 1944, but again without the interest due thereon from the date of assessment to the time of payment. At the time of trial, there remained a balance of deficiencies and penalties, for the years 1944 and 1947, in the sum of $19,799.21, together with the accumulated interest on the deficiency and penalty for each year, 1942 to 1947, from the date of the assessment until the deficiency and penalty for the year had been or should be paid.

The District Court entered a judgment against Payne on this basis. In so doing, it upheld all of the deficiencies determined by the Commissioner to exist, and found as a fact that the understating of income in which Payne had engaged had been done by him with the fraudulent intent to evade part of the taxes owing from him for each of the years involved, so that the Commissioner had been entitled to impose the fraud penalties which he did, under 26 U. S. C. A., Int. Rev. Code of 1939, § 293 (b).

The court further held that the two pieces of property, standing in the name of Payne and his wife as tenants by the entirety, had been purchased with funds of Payne, and that the using of Payne's funds for this purpose, with the taking of title in this form, had legally made Payne insolvent as to his creditors. It held also that this equally was true as to the third piece of property, title to which stood in the name of the wife alone, and that, beyond this, the circumstances under which the wife had taken title had involved a specific intent on the part of both her and Payne to defraud his creditors, in that, when

the property was purchased, title had been placed in the name of a third party, who had given back a deed in blank, and that the wife's name had been inserted in this deed as grantee, only after the Commissioner's assessment of tax deficiencies and fraud penalties had occurred and Payne had been given notice thereof.

The court accordingly decreed that the United States was entitled "to a reformation of the title of each of the real properties * * * vesting such title in the defendant Vaughn C. Payne, with whose funds such properties were purchased", and to have foreclosure and sale of the property made for the satisfaction of its liens thus existing, pursuant to 28 U. S. C. A., §§2001 and 2002.[2]

In addition to the judgment and decree provisions which have been set out, the court also entered a personal judgment against the wife, for the unpaid interest existing as to the 1942 deficiency and penalty, from the date of the assessment thereof to the time that Payne had paid the deficiency and penalty for that year. Judgment was so entered against the wife, because of the fact that she had placed her signature upon the return filed for 1942, below the signature of Payne, and the court held that it therefore constituted a joint return and had the effect of creating a joint and several liability against her as well as Payne, for whatever tax obligation there existed for the year 1942.

On this appeal, taken by both the husband and the wife, the entering of this personal judgment against the wife, for the unpaid interest on the 1942 deficiency and penalty, is first attacked. Relatively, only a small pecuniary amount is involved, but the wife apparently feels that

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[2] One of the pieces of property was subject to a valid, previous mortgage, and the decree contained provision properly protecting the superior rights of the mortgagee.

there has been an arbitrary attempt to perpetrate an injustice upon her and that she is entitled to vindication as a matter of principle.

The 1942 return, in its heading, listed Payne's name alone, as the taxpayer for whom the report was being made. It gave his occupation as a physician and showed, as the only item of income and source tax liability involved, compensation for personal services in the amount of $6406.70. Payne duly signed on the line indicated for "Signature of taxpayer." There were two other blank lines appearing on the form—one to the left of the taxpayer's signature line, indicated as being for "Signature of person (other than taxpayer or agent) preparing return", and another below the taxpayer's signature line, with the indication, "If this is a joint return (not made by agent) it must be signed by both husband and wife." The wife had placed her signature on this line.

She testified that she had no earned or other income as a basis for any signing by her of the 1942 return as a taxpayer. She was a housewife and was not engaged in any outside employment. Nor was she possessed of any other sources of income. She had not placed her signature upon any of the other returns involved and did so on the 1942 return only because "I thought that was where I had to sign because I helped to fill it out." She had no reason and no intent to sign the form as the making of a joint return. And there was at that time no advantage to the husband in having her join in the return.

The Commissioner seems to have so construed the situation throughout the years, for no notice of deficiency had ever been mailed to her either separately or jointly, and no assessment of deficiency had ever been made against her. The complaint in the present suit had alleged that the 1942 return, the same as those for the other years involved, was Payne's individual income tax return. And

the prayer of the complaint contained no demand for any relief aaginst her, except in her transferee status. The claiming of personal liability against her for interest on the 1942 deficiency and penalty assessed against Payne, between the date of the assessment and the time that Payne had made payment of them, was apparently a matter of trial sweep and victory thrust.

The placing of the wife's signature upon the return, at the place where this was done, would, of course, prima facie entitle the situation to be regarded as one of joint return. But there is no statute or rule of law that makes such a situation absolute and conclusive, so that a mistake by a wife, in having signed her husband's tax return to show that she had assisted in the preparation of it but having placed her signature on the wrong line of the form, would be legally incapable of being explained or escaped by her.

The circumstances which have been set out seem to us to be without any rational basis of conviction or persuasion for a finding and conclusion in the situation that the 1942 return was signed by the wife as either an actual or a purported taxpayer. This part of the court's judgment is accordingly, as a matter of fairness, reversed.

In all other respects, however, we think that the judgment and decree are entitled to be affirmed.

The wife has contended that there was no basis on which to subject her to transferee liability, because no assessment had ever been made against her under 26 U. S. C. A., Int. Rev. Code of 1939, § 311, and that, without such an assessment against her, no lien could exist upon her title or rights in the property involved, under 26 U. S. C. A., Int. Rev. Code of 1939, § 3670.

But the need for assessment as to a transferee has application only to the making of collection under the sum-

mary administrative procedures provided for in § 311 and related sections. These provisions do not preclude the bringing, in appropriate legal and equitable circumstances, of a plenary suit against a transferee to subject property received by him from a taxpayer, to the payment of income taxes owed by the latter, under the trust fund doctrine. **Leighton v. United States**, 289 U. S. 506, 53 S. Ct. 719, 77 L. Ed. 1350; 9 Merten's Law of Federal Income Taxation, § 53.04.

It is true that the decree here included a declaration that the Government had a lien upon the property involved against the wife as transferee. The property was not sold, however, upon the basis of a foreclosure of such a purported lien, but upon "a reformation of the title" as to each of the three pieces of property, so as to vest all of them in Payne personally, and a foreclosing of the lien which thereupon would become perfected and legally existing against the properties by virtue of the filing of the assessment list as to him in 1949.

Nullification of the titles standing in the Paynes as tenants by the entirety was necessary under Missouri law in order to make these properties legally liepable and reachable for Payne's individual tax liability. See **United States v. Hutcherson**, 8 Cir., 188 F. 2d 326. And the court also properly set aside the wife's title to the third piece of property as a fraudulent conveyance. In this situation, the question of separate lien as a matter of assessed transferee liability is of no importance.

The titles, as they stood, were duly entitled under Missouri law to be set aside as fraudulent conveyances, in their relation to Payne's tax liability, and to be made to vest in him individually or personally, so that they could be subjected to the satisfying of his tax liability. There was at the time that each of the pieces of property was purchased and title taken in a manner that did not leave

them subject to complete legal reach for Payne's individual liabilities, income tax obligations owing from him to the Government, which had not been satisfied and which were sought to be made the subject of judgment against him in this suit.

The Missouri courts have repeatedly held—with the following quotation from **Oetting v. Green,** 350 Mo. 457, 166 S. W. 2d 548, 550, being typical and here used in example—as follows: "A voluntary conveyance of land is fraudulent in law and void against existing creditors regardless of intent, if it includes so much of the debtor's property so as to leave him without means to pay his debts. **Friedel v. Bailey,** 329 Mo. 22, 44 S. W. 2d 9. The burden shifts to the party accepting the conveyance to show that debtor has retained such means."

The evidence here amply supports the finding of the trial court that the purchase and placing of title to the various pieces of property, at the time and in the manner in which each was done, rendered Payne insolvent. It also clearly entitled the court to hold that the fraud penalties imposed by the Commissioner were warranted and proper.

Appellants make the contention, however, that the court had no right to uphold and grant recovery for the fraud penalties in the present action, because the complaint failed to allege that recovery for fraud was being sought and to set out the facts and circumstances constituting the alleged basis for the charge.

Rule 9 (b) of the Federal Rules of Civil Procedure, 28 U. S. C. A., dealing with "Pleading Special Matters", requires that, "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity". We should doubt that this Rule has any application to a complaint in a suit to collect

assessed tax deficiencies and fraud penalties, of which the taxpayer has administratively been given due notice of determination, assessment, and demand for payment. In any event, however, we are satisfied that it would not preclude the court from entering a judgment upholding such fraud penalties, where, as here, the question of their validity has been fully tried, where it is clear that the taxpayer knew that the question would be and was being made the subject of trial,[3] and where he raised no objection to the sufficiency of the complaint in this respect until after the conclusion of the trial. A copy of the assessment list, showing the amounts of the deficiencies and the penalties of 50% imposed upon these amounts, was attached to and made a part of the complaint, and this was, in our opinion, sufficient in the circumstances, as against the time and form of appellants' attack, to make the judgment properly supported by the pleadings.

Even in the regular administration of Rule 9 (b) and the carrying out of its general purpose, it is to be borne in mind that, as stated in 1 Barron and Holtzoff, Federal Practice and Procedure, § 302, p. 593, "the sufficiency of a pleading must largely depend upon the nature of the case, the complexity or simplicity of the transaction or occurrence, the relationship of the parties and the determination of how much circumstantial detail is necessary to give notice to the adverse party and enable him to prepare a responsive pleading".

The final contention made by appellants is that collection of the deficiencies and penalties, or of a part of them, was barred by the statute of limitations. We are unable to see any basis whatsoever for this contention.

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[3] As a matter of fact, appellants' answer made express reference to "ad valorem 50% fraud penalty", claimed that they on this ground were entitled to a jury trial, and also spoke of the "burden of proof in fraud cases."

Subsection (a) of § 276 of the Internal Revenue Code of 1939, 26 U. S. C. A., provides: "In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such a tax may be begun without assessment, at any time." Subsection (c) further provides: "Where the assessment * * * has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax * * *."

The false or fraudulent returns filed by Payne for the years 1942-1947, with intent to evade taxes, entitled the Commissioner, under § 276 (a), to make assessment of deficiencies and fraud penalties for these years at any time, and he did so in 1949. Under § 276 (c), he had the right to bring suit to collect the assessed deficiencies and penalties within six years after the assessment, and he did so in 1953. Under Missouri law, a limitation period of 10 years obtained for setting aside the fraudulent conveyances existing as to the properties involved, which had been purchased in 1944, 1945 and 1947. **Rogers v. Brown**, 61 Mo. 187; V. A. M. S., § 516.010. Thus neither under federal law, as a suit to collect the assessed deficiencies and penalties, nor under Missouri law, as a suit to set aside the fraudulent conveyances (if state law could have any application) was the action barred.

Appellants purport to see in **United States v. Updike**, 8 Cir., 32 F. 2d 1, aff'd 281 U. S. 489, 50 S. Ct. 367, 74 L. Ed. 984, some support for their contention that the action here is barred, but we are not able to follow their reading of that case nor their argument in respect to its significance. The only part of the opinion that has any materiality here is its holding that the six-year limitation, under § 276 (c), upon the Government's right to collect a tax, which has been made the subject of an assessment

against the taxpayer, by a proceeding in court, as much precludes the maintenance of an action after that period against a transferee of the taxpayer's assets as one against the taxpayer personally. But that does not help the wife in her position of transferee here, for the suit, both as to her and as to Payne, was commenced within six years after the making of the assessment against Payne.

This is as far as it is necessary to discuss appellants' contentions.

The personal judgment entered against the wife for interest on the 1942 deficiency and penalty is reversed. In all other respects, the judgment and decree are affirmed.

Reversed in part, affirmed in part.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

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JOHN T. FEY, Clerk

No. 648

In the Supreme Court of the United States

OCTOBER TERM, 1957

VAUGHN C. PAYNE AND EDITH PRUITT PAYNE,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
CHARLES K. RICE,
Assistant Attorney General,
A. F. PRESCOTT,
DAVID W. HORTON, Jr.,
Attorneys,
Department of Justice, Washington 25, D. C.

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court rendered no opinion. Its findings of fact and conclusions of law (R. 32–39)[1] are not officially reported. The opinion of the Court of Appeals (Pet. 13–23) is reported at 247 F. 2d 481.

JURISDICTION

The judgment of the Court of Appeals (Pet. 23) was entered on August 8, 1957 (Pet. 13). Petition for rehearing was denied on September 17, 1957. (Pet. 2.) The petition for a writ of certiorari was filed on December 6, 1957. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

[1] Record references are to the record filed in the United States Court of Appeals for the Eighth Circuit.

QUESTIONS PRESENTED

1. Whether the Court of Appeals was correct in holding that the United States, in its suit to recover assessed and unpaid income tax deficiencies, 50% civil fraud penalties, and interest, sufficiently pleaded Dr. Vaughn C. Payne's civil tax fraud.

2. Whether Mrs. Payne is liable as a transferee for the taxes, civil fraud penalties, and interest assessed against Dr. Payne to the extent of transfers made to her by Dr. Payne, and whether both spouses are similarly liable to the extent of property transferred by Dr. Payne in entirety.

STATUTES INVOLVED

Sections 276 (a) and (c) and 311 (a) (1) and (b) (1) of the Internal Revenue Code of 1939 are set forth in the Appendix, *infra*.

STATEMENT

This suit was instituted on August 27, 1953 (R. 7), against Dr. Payne and his wife: (a) to have certain deficiencies, penalties, and interest reduced to judgment against Dr. Payne; (b) to have it decreed that two described pieces of real estate, acquired in 1944 and 1945, with title taken and standing in the name of Dr. Payne and his wife as tenants by the entirety, had been purchased with funds of Dr. Payne, had left him without sufficient other assets to pay his outstanding tax liabilities, and had the purpose and result of defrauding Dr. Payne's creditors, including the United States; (c) to have it decreed that a third piece of real estate, acquired in 1947, with title taken and standing in the wife's name, had been purchased with funds of Dr. Payne, constituted a conveyance

and transfer to her without consideration, and had left Dr. Payne without sufficient assets to pay his outstanding tax liabilities; and (d) to have enforced the Government's lien, as well as such other rights the United States had in the circumstances to have the real estate subjected to the payment of the tax liability. (R. 1–7; Pet. 14–15.)

The pertinent facts, as found by the District Court (R. 33–37) and adopted by the Court of Appeals (Pet. 13–16, 20–22), are as follows:

During the years 1942 through 1947, Dr. Payne willfully understated his earned income with the fraudulent intent to evade his taxes.[2] (R. 35; Pet. 15.)

The taxes involved (excepting a small amount thereof) appeared on the assessment list received by the then Collector on July 11, 1949 (less than six years from the date of the filing of the complaint herein). Notice of the determinations, which had been previously made, and demand for payment were properly served on Dr. Payne. Notices of liens were filed on August 12, 1949. The balance owing upon the foregoing assessments, at the time of the trial, was $19,799.21 on account of the 1944 and 1947 assessments, plus interest on all stated assessments for 1942–1947, inclusive, from the dates thereof. (R. 34; Pet. 13–15.)

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[2] The same finding was made as to Mrs. Payne for the year 1942 because she, as well as Dr. Payne, had signed the return for that year. The Court of Appeals reversed, concluding that she had not intended to sign the return as a joint maker. (Pet. 16–18.) The United States has not petitioned for a writ of certiorari from this part of the judgment of the Court of Appeals.

The real properties held by Dr. and Mrs. Payne in entirety were acquired with funds earned by Dr. Payne, and Dr. Payne was made insolvent by the use of his funds to purchase the said real properties for himself and his wife as tenants by entirety. With funds earned by Dr. Payne, his wife, in October, 1947, purchased certain other real property described in the complaint, title to which was taken at that time on behalf of Dr. Payne and his wife in the name of one Samuel E. Morganstern. There was delivered to Mrs. Payne in October, 1947, a general warranty deed to Morganstern from the defendant Marjorie Mitchell Bell and a general warranty deed from Morganstern in which the date and name of the grantee were left blank. The use of Dr. Payne's funds for the purchase of this property in the name of Morganstern again left Dr. Payne insolvent. In 1950, after the deficiency assessments were made against Dr. Payne as herein described, the defendants, Dr. and Mrs. Payne, caused the name of Mrs. Payne to be entered as grantee in the blank deed from Morganstern, and the deed was then recorded. The transfer of the last above described property was made with intent to defraud the creditors of Dr. Payne. (R. 35, 37; Pet. 15.)

The defendants Marjorie Mitchell Bell and Samuel E. Morganstern were served with process in this action, but defaulted. (R. 35-36.)

The District Court held: (a) that Mrs. Payne, and Dr. and Mrs. Payne as tenants by entirety, were liable to the United States as transferees of the assets of Dr. Payne to the extent of the above property; (b)

that the United States was entitled to a reformation of the title of each of the real properties described, vesting such title in Dr. Payne, with whose funds said properties were purchased; and (c) that the United States was entitled to a decree of foreclosure on account of its tax liens. (R. 38, 39.)

Except for the personal judgment entered by the trial court against the wife for unpaid interest on the 1942 deficiency and penalty, the Court of Appeals affirmed the judgment of the District Court in all respects. (Pet. 18, 23.) In so doing, it specifically held (Pet. 20) that the evidence amply supported both the additional assessment of 50% civil fraud penalties, and the trial court's finding that each of the three real property purchases rendered Dr. Payne insolvent.

ARGUMENT

1. The Court of Appeals correctly held that the United States, in its suit to recover assessed and unpaid income tax deficiencies, 50% civil fraud penalties, and interest, sufficiently pleaded Dr. Vaughn C. Payne's civil tax fraud.[3] There is no merit in petitioners' assertions (Pet. 3, 11) that such was not the case.

It has long been established that, for purposes of a collection suit, the additionally assessed 50% statutory fraud penalties—*viz.*, civil additions to tax for failure to report income "due to fraud with intent to evade tax"—are properly collectible as a part of the

[3] Petitioners make no attempt to attack the findings of both courts below that the returns were made with an intent to evade taxes.

assessed income taxes due. *Helvering* v. *Mitchell*, 303 U. S. 391. As the Court of Appeals pointed out (Pet. 20–21), the applicability of Rule 9 (b) of the Federal Rules of Civil Procedure is, at best, doubtful in the case of "a complaint in a suit to collect assessed tax deficiencies and fraud penalties, of which the taxpayer has administratively been given due notice of determination, assessment, and demand for payment." In addition, as part of the complaint in this case, a copy of the assessment list (Ex. 1, R. 5), showing the amounts of the deficiencies and the 50% civil fraud additions, was both attached thereto and expressly incorporated therein by reference. Moreover, Dr. Payne, in his answer, made express reference to the "Ad Valorem 50% Fraud Penalty," while referring, at the same time, to the "Burden of Proof in Fraud Cases." (R. 8–9).

Certainly, as this Court said in *Hickman* v. *Taylor*, 329 U. S. 495, 501, the purpose of the Federal Rules—*viz.*, to "restrict the pleadings to the task of general notice-giving"—was demonstrably satisfied. See, also, 1 Barron and Holtzoff, *Federal Practice and Procedure*, § 302, p. 543, for the proposition that "the sufficiency of a pleading must largely depend upon the nature of the case, the complexity or simplicity of the transaction or occurrence, the relationship of the parties and the determination of how much circumstantial detail is necessary to give notice to the adverse party and enable him to prepare a responsive pleading."

Kithcart v. *Metropolitan Life Ins. Co.*, 88 F. 2d 407 (C. A. 8th), relied on by petitioners (Pet. 6, 11), is not in conflict with the decision below, but is clearly

distinguishable. That case involved a defendant's motion to dismiss a bill of complaint praying that judgment in a prior action at law be set aside on the ground that the plaintiff in the former action, through the fraudulent acts of the defendant, was prevented from producing certain testimony in rebuttal of an affirmative defense interposed by the defendant. The court stated it was not made clear as to just what evidence plaintiff was prevented from producing, nor what acts were committed by the defendant or its representative which it claimed constituted fraud. Here, the Court of Appeals was correct in concluding (Pet. 21):

> In any event, * * * we are satisfied that it [*viz.*, Rule 9 (b)] would not preclude the court from entering a judgment upholding such fraud penalties, where, as here, the question of their validity has been fully tried, where it is clear that the taxpayer knew that the question would be and was being made the subject of trial, and where he raised no objection to the sufficiency of the complaint in this respect until after the conclusion of the trial.

2. There is no merit to the petitioners' contention that judgment can not be sustained against Mrs. Payne as a transferee because no assessment was made against her. The Government may choose either the summary remedy provided in Section 311 of the 1939 Code (Appendix, *infra*, pp. 10–11), which requires assessment against the transferee, or, as here, an equity proceeding brought against the transferee on the trust fund theory, under which it is unnecessary to make any assessment against the transferee. *Leighton* v.

United States, 280 U. S. 506; *United States* v. *Fisher*, 57 F. Supp. 410 (E. D. Mich.); *United States* v. *Prince*, 120 F. Supp. 563 (S. D. N. Y.). *United States* v. *Updike*, 32 F. 2d 1 (C. A. 8th), affirmed, 281 U. S. 489, cited by petitioners, is not to the contrary. That case merely holds that, even where an assessment may be made at any time, the six year statute of limitation within which to institute suit applies to both transferor and transferee where the taxes have been assessed against the transferor. Here, the taxes were assessed against the transferor in July, 1949, and this suit was instituted in August, 1953, long before the six year period of limitations within which to bring suit had expired.

Of the eleven questions raised in the petition (Pet. 2–3), all but question ten (treated in Argument 1, *supra*) are resolved by the ruling that the petitioners are liable under the trust fund doctrine, and a reformation of the title to the properties held in the name of Mrs. Payne and in entirety.[4] Petitioners do not attack the findings of the courts below that the transfer of one of the properties to Mrs. Payne was made with intent to defraud the creditors of Dr. Payne; nor the findings of both courts below that the properties held in entirety were purchased with funds of Dr. Payne, each resulting in insolvency. In such circumstances, there was ample basis for reformation of the respective titles rendering them subject to the

[4] There is no basis for petitioners' assertion (Pet. 3, 9-10) that the instant suit is "based upon the assessment and lien theory" as to the transferees. See complaint (R. 1-4) and opinion of the Court of Appeals (Pet. 14).

tax liens. Compare *Detroit Bank* v. *United States*, 317 U. S. 329; *United States* v. *Hutcherson*, 188 F. 2d 326 (C. A. 8th).

CONCLUSION

The decision below is correct and there is no conflict. It is respectfully submitted that the petition for certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
CHARLES K. RICE,
Assistant Attorney General.
A. F. PRESCOTT,
DAVIS W. MORTON, JR.,
Attorneys.

DECEMBER 1957.

APPENDIX

Internal Revenue Code of 1939:

SEC. 276. SAME-EXCEPTIONS.

(a) *False Return or No Return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. * * *

* * * * * *

(c) *Collection After Assessment.*—Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(26 U. S. C. 1952 ed., Sec. 276.)

SEC. 311. TRANSFERRED ASSETS.

(a) *Method of Collection.*—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and

proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees.*—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

* * * * *

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) *Period of Limitation.*—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer—within one year after the expiration of the period of limitation for assessment against the taxpayer;

* * * * *

except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively—then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.

* * * * *

(26 U. S. C. 1952 ed., Sec. 311.)